

(27,705)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 355.

NORTH PACIFIC STEAMSHIP COMPANY, APPELLANT,

vs.

WILLIAM T. SOLEY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA.

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1 In the District Court of the United States in and for the Southern Division of the Northern District of California.

In Equity. No. 386.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Complainant,
vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA,
William T. Soley, and H. I. Mulcrevy, County Clerk of the City
and County of San Francisco, and ex officio Clerk of the Superior
Court of the State of California in and for the City and County
of San Francisco, Defendants.

Bill of Complaint.

To the Honorable the Judges of the District Court of the United
States in and for the Southern Division of the Northern District
of California:

North Pacific Steamship Company, a corporation, organized and
existing under and by virtue of the laws of the State of California
and having its principal place of business in the City and County of
San Francisco, State of California, brings this its bill of complaint
against the above named defendants and each of them:

And your complainant complains of said defendants and of each
of them and says:

I.

That at all times herein mentioned your complainant was and it
now is a corporation duly and regularly organized and existing
under and by virtue of the laws of the State of California with its
principal place of business in the City and County of San Francisco,
in said State.

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II.

That the above named defendant Industrial Accident Commis-
sion of the State of California, hereinafter called the "Commission"
at all times herein mentioned was and it now is a public body, board
or commission created by an act of the Legislature of the State of
California and charged with and engaged in the administration
of the Workmen's Compensation Insurance and Safety Act, Chapter
176 of the laws of 1913 of the State of California as amended by
Chapters 531, 607 and 662 of the Laws of 1915, and hereinafter
called the "Compensation Act."

III.

That the above named defendant, H. I. Mulcrevy, at all times herein mentioned was and he now is the duly and regularly elected, qualified and acting County Clerk of the City and County of San Francisco, State of California, and the Ex Officio Clerk of the Superior Court of the State of California in and for said City and County.

IV.

That the above named defendant, William T. Soley is a citizen of the United States and a resident of the County of San Diego, State of California.

V.

That on and at all times herein mentioned, prior to the 16th day of June, complainant was engaged in the business of transportation of freight and passengers in interstate commerce between various points on the Pacific Coast in the State of California and in the states of Oregon and Washington and in the course of its said business at the said time, owned and operated the ocean going steamer "Breakwater."

VI.

That the matter in controversy herein exceeds, exclusive
3 of interest and costs, the sum or value of three thousand
(3,000) dollars, to wit—the sum of three thousand fifteen
and 35/100 (3,015.35) dollars.

VII.

That on or about the 12th day of June, 1916, at and in the harbor of San Diego, California, said steamer "Breakwater" was then there lying in navigable waters of the United States loading cargo and was at said time actually engaged in interstate commerce between a point in the state of California and a point in the state of Oregon; that at said time and in the course of his employment as stevedore on board of said steamer, while said steamer was lying within the navigable waters of the United States in the harbor of San Diego, State of California, said William T. Soley was injured by falling down a hatchway of said steamer "Breakwater" and sustained from said injury, a fracture of the cervical vertebræ.

VIII.

That thereafter on the 27th day of November, 1916, said William T. Soley filed an application for adjustment of claim hereinafter called "the application" before the said Commission for damages and for an award under the said Compensation Act, wherein it was stated and appeared that said William T. Soley at the time of his

alleged injury was engaged in the occupation of longshoreman as aforesaid. Said application was and is numbered 3464 in the records of said Commission.

IX.

That thereafter proceedings were duly and regularly had in the matter of said application of said William T. Soley for adjustment of claim, wherein complainant throughout protested and denied the jurisdiction of said Commission and alleged that the accident 4 mentioned in said application and the injuries alleged to have resulted therefrom and any controversy arising out of or in connection therewith, were exclusively within the admiralty and maritime jurisdiction and cognizance of the Courts and laws of the United States and that said Commission had no jurisdiction to hear said application or to make an award thereon. Nevertheless, said Commission made and entered and filed its certain findings and award in the matter of said application under and by virtue of which, said Commission found among other things that said William T. Soley on the 12th day of June, 1916, while in the employ of your complainant as a longshoreman and in the performance of services growing out of and incidental to his said employment, sustained an injury, to wit: that said William T. Soley while placing hatch coverings on hatchways of the said steamer "Breakwater" accidentally fell into the hold of said steamer, thereby sustaining a fracture of the cervical vertebrae, and that at the time of said injury, said William T. Soley was subject to the jurisdiction of said Commission.

That thereupon said Commission made an award in the matter of said application to said William T. Soley as follows:

1. Cash in hand the sum of two hundred eighty-one dollars and twenty-five cents (\$281.25), this amount being the sum of weekly payments of said disability indemnity accrued up to and including the 18th day of December, 1916, less, however, the sum of thirty dollars (\$30.00) to be deducted therefrom and paid to Herbert N. Ellis as his attorney's fee, as attorney for the applicant herein.

2. The further sum of eleven dollars and twenty five cents (\$11.25) per week payable weekly in advance beginning with the 19th day of December, 1916, until the termination of said disability or the further order of this Commission, the total period of payment however not to exceed two hundred forty weeks.

3. Cash in hand the sum of five hundred fifteen dollars and thirty-five cents (\$515.35) for medical and hospital services rendered as follows:

5	Agnew Sanitarium	\$149.85
	Dr. E. H. Crabtree	152.00
	Dr. Maynard C. Harding	203.50
	Dr. L. C. Kinney, for X-ray	10.00

That under and by virtue of said award your complainant has been ordered to pay to said William T. Soley the total sum of three thousand fifteen and 35/100 (3,015.35) dollars.

That no further order with respect to the sums of money required in and by said award to be paid by your complainant to said William T. Soley has been made by said Commission and that the award is now in full force and effect.

X.

Complainant further alleges:

(1) That the accident which caused the injury of said William T. Soley and which was the subject of his said application occurred while the said William T. Soley was engaged in the performance of a maritime contract of employment, to-wit, the employment of a stevedore or longshoreman while aboard the said vessel, "Breakwater" at a time when said vessel was afloat upon navigable waters of the United States of America and engaged in interstate commerce.

(2) That the said injury was and is under the Constitution and Laws of the United States exclusively within the admiralty and maritime jurisdiction of the Courts of the United States.

(3) That the said accident with its resulting injury was one with respect to which the Congress of the United States may establish and has established an exclusive rule of liability.

(4) That under and by virtue of the provisions of Section 86-C of said Compensation Act, said Compensation Act has no application to said accident and said injury; that said findings and award are upon their fact null, void and of no effect whatsoever in law or in equity.

XI.

Your complainant further alleges that the said Compensation Act is unconstitutional for the reason that it violates and in so far as it violates the provisions of the 14th amendment to the Constitution of the United States:

(1) In that it denies to your complainant herein as employer of said William T. Soley, the equal protection of the laws, in that said compensation act does not afford an exclusive remedy, but leaves the complainant and its vessel subject to a suit in admiralty.

(2) In that it deprives your complainant of property without due process of law.

Your complainant further alleges that said Compensation Act is unconstitutional for the reason that it violates the provisions of Article III, Section 2, of the Constitution of the United States, conferring admiralty jurisdiction upon the Courts of the United States, and the provisions of Section- 24 and 256 of the Judicial Code.

XII.

Your complainant alleges:

- (1) That said Commission had no jurisdiction to make, enter or file said award.
- (2) That said award is upon its face, null, void and of no effect.
- (3) That said award opposes a liability upon your complainant in violation of the Constitution of the United States and the laws of the United States passed pursuant thereto.

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XIII.

That your complainant has exhausted all remedies allowed by said Compensation Act to prevent the enforcement of said award.

XIV.

That Section 26 of said Compensation Act provides that a certified copy of said Findings and Award may be filed with the Clerk of the Superior Court for any county or city and county and that judgment must be entered by the Clerk in conformity therewith immediately upon the filing of such findings and award and that execution may thereupon issue upon said judgment; that said William T. Soley has filed or caused to be filed a certified copy of said findings and award with said H. I. Mulcrevy as Clerk of the Superior Court of the State of California in and for the City and County of San Francisco, as aforesaid, and has caused and threatened to and will, unless restrained by this Honorable Court, from time to time, cause execution to be issued thereon, directed to the sheriff of the County of Alameda, State of California, commanding him to make the amount of said award, to-wit, the sum of three thousand fifteen and 35/100 (3,015.35) dollars, out of the property of your complainant; that your complainant has personal property in the said County of Alameda, State of California, subject to execution; that as complainant is informed and believes, the said William T. Soley is insolvent and will be unable to respond in damages in the premises; that unless the enforcement of the said award of said Commission and the levying of execution thereon is stayed by injunction in this proceeding, complainant will suffer irreparable damage, in this, that its property will be taken in satisfaction of said award without recourse on the part of complainant.

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XV.

That your complainant has no plain, speedy, adequate or sufficient remedy or any remedy at all at law, and that relief against said award and said execution is obtainable only in a court of equity.

Wherefore, your complainant, to the end that it may obtain the relief to which it is justly entitled in the premises,—

(1) Prays the Court to grant to your complainant its writ of subpoena directed to the defendants above named commanding and requiring them and each of them to appear herein and answer under oath to the several allegations in this bill of complaint.

(2) Prays that the Court grant unto the complainant a writ of injunction pendente lite issuing out of and in accordance with the rules and practice of this Honorable Court, to be directed to the said defendants and each of them, restraining them, their servants, attorneys, employees and agents and all persons acting under their authority, direction or control to desist and refrain from taking any action whatsoever for the enforcement of said award and from having execution levied upon the property of complainant to satisfy said award, or to take any steps or action whatsoever toward the enforcement or levying of any execution heretofore issued upon said award; as also a restraining order to the same effect until an application for such injunction can be heard and that at the final hearing hereof such injunction may be made perpetual.

(3) Prays that upon the hearing of this suit and an adjudication therein the Court decree that the purported award so in form 9 made by the said defendant Industrial Accident Commission of the State of California, be adjudged to be null and void and of no effect.

(4) Prays that your complainant may have such other and further relief preliminary and final as to the Court may seem *mete* and proper and which equity may require and for its cost of suit herein incurred.

H. W. GLENSOR,
ERNEST CLEWE,
Solicitor- for Complainant.

10 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Chas. P. Doe, being first duly sworn, deposes and says: That he is an officer, to wit, the president of North Pacific Steamship Company, a corporation, the complainant named in the foregoing bill of complaint and that for that reason, he makes this verification for and on behalf of said North Pacific Steamship Company; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated on his information and belief, and as to those matters, he believes it to be true.

CHAS. P. DOE.

Subscribed and sworn to before me this 18th day of December, 1917.

[SEAL.]

MARIE FOREMAN,
*Notary Public in and for the City and
County of San Francisco, State of California.*

Endorsed: Filed Dec. 18, 1917. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

11 (Title of Court and Cause.)

Answer of William T. Soley.

To the Honorable the Judges of the District Court of the United States in and for the Southern Division of the Northern District of California:

Comes now defendant William T. Soley and for answer to the bill of complainant herein admits, denies and alleges as follows:

I.

Defendant admits all the allegations contained in paragraph I of complainant's said bill.

II.

Defendant admits the allegations contained in paragraph II of said bill and further alleges on information and belief that the said Industrial Accident Commission of the State of California is a state court of competent jurisdiction over the subject matter and parties to this suit as appears from the record and judgment sought herein to be enjoined; that the decisions of said Industrial Accident Commission of the State of California have the same force of law as the decisions of other state courts therein.

III.

Defendant admits the allegations contained in paragraph III of complainant's said bill, and further answering said paragraph alleges that said H. I. Mulcrevy is merely a nominal defendant and in no wise a party in interest to the subject matter of this suit.

IV.

Admits that defendant William T. Soley is a citizen of the United States and a resident of the county of San Diego, state of California.

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V.

Defendant has no knowledge or information sufficient to enable him to form a belief as to whether at the time alleged in paragraph

V of said bill complainant was engaged in interstate commerce and basing his denial on such lack of information denies that at said time complainant was engaged in interstate commerce.

VI.

Defendant denies that the value of the matter in controversy herein exclusive of interest and costs exceeds the sum of three thousand dollars; and alleges that the weekly indemnity of eleven and 25/100 dollars awarded to defendant from complainant under the terms of said award and judgment was contingent upon the continuance of defendant's total disability, as appears at the foot of page 4 of complainant's bill, and that at the time of the filing of complainant's bill herein defendant's said total disability had terminated and all of complainant's subsequent liability under the terms of said award of the Industrial Accident Commission of the State of California had ceased; that the total liability of complainant under said judgment sought herein to be enjoined does not and will not exceed exclusive of interest and costs the sum of thirteen hundred eighty-one and 60/100 dollars (\$1,381.60).

VII.

For answer to paragraph VII of said bill defendant alleges that none of the allegations contained in said paragraph VII of complainant's bill herein appear in the findings made by the Industrial Accident Commission of the State of California on which its said judgment is based except the allegation that on the 12th day of June, 1916, at San Diego, California, William T. Soley in the course of his employment as stevedore on board the steamer Breakwater was injured by falling down a hatchway of said steamer Breakwater and sustained from said injury a fracture of the cervical vertebræ; that no evidence in support of the further allegations interpolated by complainant in said paragraph VII was introduced by it 13 on its appearance in the proceedings had before said Commission upon defendant's application for indemnity; for lack of knowledge or information sufficient to enable him to form a belief defendant denies that complainant was at said time loading cargo or was at said time engaged in interstate commerce.

VIII.

Answering paragraph VIII of complainant's bill herein defendant denies that in the application for indemnity filed by William T. Soley before said Commission it was stated or appeared that said William T. Soley at the time of his alleged injury was engaged in the occupation of longshoreman "as aforesaid;" and alleges that said application filed by William T. Soley contains no allegation that at the time of the accident therein complained of the steamer Breakwater was then and there lying in the navigable waters of the United States loading cargo, or that at said time said steamer Breakwater

was engaged in interstate commerce; and that no evidence of such facts appear in the record of said application or in the proceedings had thereon before said Commission.

IX.

Defendant denies that complainant herein offered any competent evidence on which said Commission could make a finding on complainant's allegation that said Commission was without jurisdiction or that defendant's contract of employment was a maritime contract; and alleges that complainant negligently failed to assert and protect his alleged rights in that with full knowledge of said adverse findings and award of said Commission complainant failed and neglected to appeal from its said judgment by applying for a rehearing thereon within the time allowed by law; that by reason of said laches of complainant in failing to apply for said rehearing within the time fixed by law said award and judgment became final.

Defendant denies that under and by virtue of said award
14 complainant has been ordered to pay to said William T. Soley the total sum of three thousand fifteen and 35/100 dollars or any other sum or amount in excess of thirteen hundred eighty-one and 60/100 dollars exclusive of interest and costs.

Defendant denies that no further order has been made by said Commission with respect to the sums of money required by said award to be paid by complainant to defendant and alleges that at the time of the filing of complainant's bill herein said Commission had made its order staying the issuance of execution on said judgment until the further order of said Commission.

X.

Defendant denies upon information and belief each and every allegation and conclusion contained in paragraph X of complainant's bill.

XI.

Defendant denies upon information and belief each and every allegation and conclusion contained in paragraph XI of complainant's bill.

XII.

Defendant denies upon information and belief each and every allegation and conclusion contained in paragraph XII of complainant's bill.

XIII.

Answering paragraph XIII of said bill defendant denies that complainant exhausted all or any remedy allowed by said Compensation

Act to prevent the enforcement of said judgment; and alleges the fact to be that complainant acquiesced in said judgment and permitted the same to become final by failing to apply for a rehearing thereon before said Commission and a review thereof by the appellate courts of the State of California at the time and in the manner specified and provided in said Compensation Act; that by his 15 said laches complainant has permitted the statute of limitations to bar him from the remedies provided in said Compensation Act.

XIV.

Defendant denies that he has caused or threatened or that he will cause or threaten execution to issue against the property of complainant in satisfaction of said award and judgment in any sum or amount greater than that of thirteen hundred eighty-one and 60/100 dollars exclusive of interest and costs.

XV.

Answering paragraph XV of said bill defendant alleges that under said Compensation Act complainant was provided with a plain, speedy, adequate and sufficient remedy at law and that he failed and neglected to pursue the same, as hereinbefore alleged in paragraph XIII hereof.

Further answering said bill defendant alleges that this court is without jurisdiction to try this cause in that defendant William T. Soley is the only defendant affected by proceedings herein or by any judgment that might hereafter be rendered; that said sole defendant in interest is a resident of the city and county of San Diego, State of California.

Wherefore, your defendant, William T. Soley, prays that this cause be transferred to the United States District Court for the Southern District of California, Southern Division, for trial; that complainant's bill herein be dismissed and that defendant have his costs.

HERBERT N. ELLIS,
Solicitor for Defendant, William T. Soley.

16 STATE OF CALIFORNIA,
County of San Diego, ss:

William T. Soley being by me first duly sworn, deposes and says: that he is one of the defendants in the above-entitled action; that he has heard read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

WILLIAM T. SOLEY.

Subscribed and sworn to before me this 31st day of December, 1918.

[SEAL.]

E. R. BASKEWILLE,
Notary Public in and for the County of San Diego, State of California.

(Title of Court and Cause.)

STATE OF CALIFORNIA,
County of San Diego, ss:

Herbert N. Ellis being first duly sworn deposes and says that he is attorney of record for defendant William T. Soley above named; that on the 31st day of December, 1918, he served the annexed answer on H. W. Glensor and Ernest Clewe, solicitors for complainant in the above-entitled action, by depositing a copy of said answer enclosed in a sealed envelope with postage paid thereon and directed to said solicitors at their office in the Mills Building in the city of San Francisco, state of California, in the postoffice at San Diego, California, on said date.

HERBERT N. ELLIS.

Subscribed and sworn to before me this 31st day of December, 1918.

[SEAL.]

AMANDA J. QUIST,
Notary Public in and for the County of San Diego, State of California.

17 Endorsed: Filed Jan. 2, 1919. W. B. Maling, Clerk, by J. A. Schaeffer, Deputy Clerk.

18 At a Stated Term, to wit, the November Term, A. D. 1919, of the Southern Division of the United States District Court for the Northern District of California, Second Division, Held at the Court Room, in the City and County of San Francisco, on Tuesday, the 3rd day of February, in the year of our Lord one thousand nine hundred and twenty.

Present: The Honorable William C. Van Fleet, District Judge.

(Title of Cause.)

(*Order Dismissing Bill of Complaint and Order for Entry of Decree.*)

This suit, heretofore tried and submitted, being now fully considered and the Court having rendered its oral opinion, it is ordered that the bill of complaint be and the same is hereby dismissed and that a decree be signed, filed and entered accordingly.

(Title of Cause.)

(Oral Opinion.)

(Rendered Feb. 3, 1920.)

The COURT (orally) :

This action is one to enjoin the enforcement of an award made by the Industrial Accident Commission. The case is brought here because of involving a Federal question and alleging the jurisdictional amount in controversy to be such as to bring it within the right to have it heard in a Federal Court. This question as to the jurisdiction of the court gives rise to the only one that calls for consideration. I am satisfied from an examination of the evidence that the amount involved in the controversy is not sufficient to vest this court with jurisdiction. The award of the Commission is, so far as material here, after reciting the circumstances of the injury and the findings of the Commission thereon:

"Now, therefore, and in conformity with the foregoing findings, award is hereby made in favor of William T. Soley, the applicant herein, against North Pacific Steamship Company, the defendant herein, of a temporary total disability indemnity, and his medical expenses, payment thereof to said applicant to be as follows:

"1. Cash in hand the sum of two hundred eighty-one dollars and twenty-five cents (\$281.25), this amount being the sum of weekly payments of said disability indemnity accrued up to and including the 18th day of December, 1916, less, however, the sum of thirty dollars (\$30.00) to be deducted therefrom and paid to Herbert N. Ellis, as his attorney's fee, as attorney for the applicant herein.

"2. The further sum of eleven dollars and twenty-five cents (\$11.25) per week payable weekly in advance beginning 20 with the 19th day of December, 1916, until the termination of said disability or the further order of this Commission, the total period of payment however not to exceed two hundred forty weeks.

"3. Cash in hand the sum of five hundred fifteen dollars and thirty-five cents (\$515.35) for medical and hospital services rendered as follows:"—and then follows a statement of the items making up that sum.

The theory upon which the action proceeds, and the allegation is made that it involves a controversy amounting to \$3,000 independently of costs and interest, is that the award as to weekly indemnity would necessarily have been paid for the entire period of 240 weeks, whereas the award itself shows that it was purely tentative and uncertain in that respect, dependent upon the continued disability of the injured employee, and until "the further order of the Commission." The evidence at the trial showed that prior to the trial and

subsequently to the bringing of the action, the Commission had made a further finding and order declaring the disability of the injured employee terminated, and that no further allowance be paid to him. So that the total amount that he could receive under the final award was some \$1,370. Such being the facts I am satisfied that it does not disclose a case which under the Federal Statutes is authorized to be brought in the Federal Court.

It is urged that the potential effect of the award was to render the plaintiff here liable for the entire sum that would result by the payment of this weekly indemnity for 240 weeks. But that is not its effect. The plaintiff had the right under the state statute to itself have applied to the Board for the order which the latter subsequently made, apparently of its own motion, terminating the period of disability and the award; and it was bound to know or ascertain by appropriate steps for the purpose what the amount involved was 21 before bringing the controversy here. It was not at liberty to assume under an award of that character that it would continue for the entire period indicated, which was thus framed to meet the provisions of the statute and was necessarily uncertain in duration of payment.

I am satisfied therefore that the jurisdictional amount in the controversy required to bring an action in this court did not and does not exist.

This conclusion renders it unnecessary to pass upon the other questions in the case. The order will be that judgment be entered dismissing the bill.

Endorsed: Oral Opinion rendered Feb. 3, 1920. Filed May 10, 1920. Walter B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

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(Title of Court and Cause.)

(Decree in Equity.)

At a Stated Term, to-wit, the November Term, A. D. 1919, of the Southern Division of the United States District Court of the Northern District of California, Second Division, Held at the Courtroom, in the City and County of San Francisco, on Tuesday, the 3rd day of February, in the year of our Lord one thousand nine hundred and twenty.

Present: The Honorable William C. Van Fleet, District Judge.

The above entitled cause came on regularly for hearing on the 26th day of August, 1919. Plaintiff being represented by Messrs. Glensor, Clewe and Aiken, and defendant being represented by Messrs. Herbert N. Ellis and Henry Heidelberg, and the cause having been submitted to the above entitled court, and the said court having duly considered the same and being fully advised in the premises.

It Is Hereby Ordered, Adjudged and Decreed that the same be dismissed for want of jurisdiction by the above-entitled court, and judgment be rendered in favor of the defendant for his costs.

WM. C. VAN FLEET,

Judge of said Court.

Received copy of within Proposed Decree this 13th day of February, 1920.

ERNEST CLEWE,

AIKEN, GLENSOR & CLEWE,

*Counsellors for Petitioner Northern
Pacific S. S. Co.*

Endorsed: Filed and entered Feb. 17, 1920. W. B. Maling,
Clerk, By J. A. Schærtzer, Deputy Clerk.

Statement on Appeal.

This cause came on for trial in the above entitled court, before the Honorable William C. Van Fleet, on the 26th day of August, 1919, upon the Bill of Complaint filed herein on the 18th day of December, 1917, and the Answer thereto of defendant William T. Soley.

Complainant thereupon offered and there was received in evidence as "Complainant's Exhibit I" the following document stipulated by the parties to be a true and correct copy of certain Findings and Award made by the Industrial Accident Commission of the State of California in favor of the defendant William T. Soley.

Before the Industrial Accident Commission of the State of California.

Claim No. 3464.

WILLIAM T. SOLEY, Applicant,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant.

Findings and Award.

This cause came on for decision by the Industrial Accident Commission of the State of California at its offices at 525 Market Street, San Francisco, California, on Friday, the 13th day of April, 1917, at 10 o'clock A. M.

Said decision was rendered upon testimony taken at a preliminary hearing held on Thursday, the 14th day of December, 1916, at 10 o'clock A. M., at the United States Post Office Building, at San Diego California, by Henry J. Bischoff, General Referee.

At said preliminary hearing said applicant was present and was represented by Herbert N. Ellis, Attorney at Law.

Evidence having been introduced by all of the parties upon all

of the issues and the cause submitted for decision, said Commission now makes its findings of fact and award as follows:

Findings of Fact.

1. That William T. Soley, applicant herein, was injured on the 12th day of June, 1916, at San Diego, California, while in the employment of defendant North Pacific Steamship Company, a corporation, as a longshoreman.

2. That said injury arose out of and in the course of said employment, was proximately caused thereby, and occurred 25 while the injured employee was performing services growing out of and incidental thereto, in the following manner: While placing hatch coverings over hatchways of the Steamer "Breakwater" upon which he was at work, applicant accidentally fell into the hold of the vessel, thereby sustaining a fracture of the cervical vertebra.

3. That at the time of said injury said employee was subject to the jurisdiction of this Commission and was not engaged in any of the occupations or employments excluded by Section 14 of the Workman's Compensation, Insurance and Safety Act from the provisions of said Act; and that said injury was not caused by either the wilful misconduct or intoxication of the said employee.

4. That said defendant employer had actual knowledge of the sustaining of said injury within the time prescribed by law, that there was no intention by applicant to mislead or prejudice the employer by failure to give written notice and that he was not in fact misled or prejudiced thereby.

5. That the medical and surgical services required to cure and relieve said injured employee from the consequences of his said injury were not furnished by the defendant. That the defendant had sufficient opportunity to furnish such services at its own expense and neglected to do so. That applicant is therefore entitled to have paid the reasonable medical, surgical and hospital charges incurred on his behalf for services rendered to cure and relieve him from the consequences of his injury, the persons rendering such services and the amount of their respective reasonable charges being by this Commission determined and approved, as follows:

26	Agnew Sanitarium	\$149.85
	Dr. E. H. Crabtree.....	152.00
	Dr. Maynard C. Harding.....	203.50
	Dr. L. C. Kinney, for X-ray.....	10.00
	 Total.....	 \$515.35

6. That at the time of said injury the average annual earnings of the applicant herein were, pursuant to stipulation of the parties hereto Nine Hundred Dollars (\$900.00), and that the average weekly earnings were Seventeen Dollars and thirty-one cents

!(\$17.31) and that sixty-five per cent thereof equals eleven dollars and twenty-five cents (\$11.25).

7. That by reason of said injury, applicant sustained a temporary total disability lasting from the 12th day of June, 1916, the duration whereof was not determinable at the time of the hearing in this case, and that compensation at the rate of Eleven Dollars and twenty-five cents (\$11.25) per week was due and payable to said applicant on account of said disability from the fifteenth day after he left work on account of his disability, or the further order of this Commission, and that such compensation accrued and payable up to and including the 18th day of December, 1916, a period of twenty-five weeks, equals the sum of Two Hundred Eighty-one dollars and twenty-five cents (\$281.25).

8. That Herbert N. Ellis has rendered services in this proceeding as attorney for the applicant, of the reasonable value of Thirty Dollars (\$30.00) payable by the applicant in said amount.

Award.

Now, Therefore, and in conformity with the foregoing Findings, Award is hereby made in favor of William T. Soley, the applicant herein, of a temporary total disability, indemnity, and his 27 medical expenses, payment thereof to said applicant to be as follows:

1. Cash in hand the sum of Two Hundred Eighty-one Dollars and twenty-five cents (\$281.25), this amount being the sum of weekly payments of said disability indemnity accrued up to and including the 18th day of December, 1916, less, however, the sum of Thirty Dollars (\$30.00) to be deducted therefrom and paid to Herbert N. Ellis as his attorney's fee, as attorney for applicant herein.

2. The further sum of Eleven Dollars and twenty-five cents (\$11.25) per week payable weekly in advance beginning with the 19th day of December, 1916, until the termination of said disability or the further order of this Commission, the total period of payment, however, not to exceed two hundred and forty weeks.

3. Cash in hand the sum of Five Hundred and Fifteen Dollars and thirty-five cents (\$515.35) for medical and hospital services rendered as follows:

Agnew Sanitarium	\$149.85
Dr. E. H. Crabtree	152.00
Dr. Maynard C. Harding	203.50
Dr. L. C. Kinney, for X-ray	10.00

INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA.
A. J. PILLSBURY,
WILL J. FRENCH,
Commissioners.

[SEAL.]

Dated, San Francisco, California, this 18th day of April, 1917.

Attested:

H. L. WHITE,
Attorney.

28 Thereupon the defendant WILLIAM T. SOLEY, called as a witness on behalf of Complainant, testified:

"I am a longshoreman by occupation. I was a longshoreman during the month of June, 1916. I am the person named as the Applicant in the proceeding instituted in December, 1916, before the Industrial Accident Commission of the State of California, which is numbered 3464 in the records of said Commission.

At the time of the accident to me, for which the award was made, I was in the employ of the North Pacific Steamship Company as a longshoreman and was working on a vessel lying afloat at the Municipal Dock at San Diego, California. On the day of the accident I had been assisting in the loading and discharging of cargo from this vessel and was replacing the hatch coverings on the hatches of the vessel at the close of work, when I was injured. The vessel ran from San Diego to San Francisco; she had come into San Diego that morning."

On cross-examination the witness testified as follows:

"I was injured on the Steamer Breakwater. I received medical attention for a long time.

Q. When did he tell you that you were cured and could go back to work?

Mr. Clewe: I object to the question as immaterial, irrelevant and incompetent, and not within any of the issues of this case; furthermore, it is hearsay.

The Court: They may have a right to show the fact. It does not make any difference what my determination may be.

It will depend upon what my view of the law is. If my conclusion should happen to be against them, they want a record which will enable them to have the case reviewed.

Mr. Clewe: I simply want my objection in the record for the same reason.

The Court: The objection is overruled.

Mr. Clewe: Exception.

A. December 10, 1917.

Mr. Heidelberg:

Q. And did you return to work on or about that date?

Mr. Clewe: It may be understood that this line of objection applies to all these questions.

The Court: Yes.

29 Mr. Clewe: Exception.

"After my doctor told me I was cured I went back to work on or about December 10, 1917, and have been working ever since. I have made no claim on my employers since that time."

Thereupon the defendant offered in evidence a certain document. The Complainant objected to the admission thereof in evidence as follows:

Mr. Clewe: We object to the admission of that offer on the ground that it is immaterial, irrelevant and incompetent, that it relates to matter taking place after the institution of this action and therefore can in no wise effect the right of the complainant to bring the action or affect its right to relief at this time."

The objection was overruled, the ruling excepted to and the document was admitted in evidence by the court as defendant's "Exhibit A." Said document was in the words and figures following, to-wit:

Before the Industrial Accident Commission of the State of California.

Claim No. 3464.

Filed Aug. 25, 1919.

WILLIAM T. SOLEY, Applicant,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Defendant.

Order Terminating Disability Indemnity.

This cause came on for further hearing this 25th day of August, 1919, upon the petition of applicant above named for an order fixing the duration and extent of his disability, applicant appearing in person and by Herbert N. Ellis, attorney at law, and defendant appearing by Aitken, Glensor, Clewe & Van Dine, attorneys 30 at law, and the cause having been submitted for decision, this Commission now finds that the disability suffered by applicant by reason of his injury on the 12th day of June, 1916, as heretofore found herein terminated on the 10th day of December, 1917, and that the disability indemnity accrued and payable to him therefor to and including said 10th day of December, 1917, amounts to the sum of eight hundred fifty-five dollars (\$855.00), which, together with the medical expenses heretofore awarded herein in the sum of five hundred fifteen dollars and thirty-five cents (\$515.35), makes a total of one thousand three hundred seven dollars and thirty-five cents (\$1,307.35), as the total liability of defendant above named to applicant by reason of said injury.

Dated at San Francisco, Calif., this 25th day of August, 1919.

INDUSTRIAL ACCIDENT COMMISSION
OF THE STATE OF CALIFORNIA.
A. J. PILLSBURY,
WILL J. FRENCH,
Commissioners.

Attest:

H. S. THOMAS,
Ass't Secretary.

L. C. B./D. B.

Thereupon it was stipulated between the parties:

1. That pursuant to the provisions of the Workman's Compensation Act of the State of California, the Findings and Award of the Industrial Accident Commission of the State of California, in favor of defendant Soley, a copy of which appears hereinabove as Complainant's Exhibit I, was filed in the office of the County Clerk of the City and County of San Francisco, State of California, 31 on June 4, 1917, and that a judgment of said Superior Court, based thereon, and in accordance therewith, was made and signed, and was recorded in Volume 118 of Judgments, at page 33 thereof, on the same day, in favor of said William T. Soley, and against said complainant.
2. That a Writ of Execution against the Complainant, directed to the Sheriff of the County of Alameda, State of California, was issued out of said Court on November 12, 1917, to satisfy said judgment of the said Superior Court, out of the property of the Complainant to the extent of the amount which had then accrued under said Findings and Award, but which was less than \$1,500.00.
3. That said Writ of Execution was returned entirely unsatisfied by said Sheriff on November 28, 1917.
4. That the Application of the defendant Soley for the termination of the Award made him by the Industrial Accident Commission and heretofore set forth as defendant's "Exhibit A" was filed with the Industrial Accident Commission on behalf of said Soley on August 20, 1919.

ALBERT S. HORNE, a witness called on behalf of the Complainant, testified as follows:

"In June, 1916, I was the auditor of the Complainant. I was familiar with the affairs of the complainant and with all its vessels. During June, 1916, and at the time of the injury to defendant Soley, the Steamer Breakwater was engaged in Interstate trade and commerce between ports on the Pacific Coast of the States of Washington, Oregon and California."

Thereupon it was stipulated between the parties that the Complainant herein, as the defendant in the proceedings before the Industrial Accident Commission, in which the said Findings and Award had been made in favor of the defendant Soley, had not pursued the statutory remedies provided in and by the Workman's Compensation Act of the State of California for the purpose 32 of appealing from said Findings and Award or of having the proceedings had before and by the said Industrial Accident Commission of the State of California, including said Findings and Award, reviewed by the Courts of the State of California.

Thereupon the case was submitted to the court for its decision.

Stipulation.

It is hereby stipulated by and between the respective parties hereto that the foregoing statement of the appeal is a full, true, complete and proper statement of the evidence given and received on the trial of this cause and that said foregoing statement of appeal may be allowed, settled and approved by the above entitled court as and for a full, true, complete and proper statement of the evidence given or presented on said trial.

Dated, San Francisco, April 14th, 1920.

HERBERT N. ELLIS,

HENRY HEIDELBERG,

Solicitors for Defendant, W. T. Soley.

ERNEST CLEWE,

AITKEN, GLENSOR, CLEWE &

VAN DINE,

Solicitors for Complainant.

Order Settling Statement on Appeal.

Pursuant to the foregoing stipulation and good cause appearing therefor;

It is hereby ordered that the foregoing statement on appeal, — and the same is, hereby settled, allowed and approved as a full, true, complete and proper statement of all the evidence given or offered on the trial of the above entitled cause.

Dated, San Francisco, April 17th, 1920.

WM. C. VAN FLEET,

United States District Judge.

33 Service and receipt of a copy of the within Statement on Appeal is hereby admitted this 24th day of March 1920.

HENRY HEIDELBERG,

HERBERT N. ELLIS,

Attorneys for Def'ts.

Endorsed: Filed Apr. 17, 1920. Walter B. Maling, Clerk.

34 *Certificate Setting Forth Jurisdictional Question.*

This cause came on to be heard upon the application for an injunction as prayed in the Bill of Complaint and for an order declaring null, void and of no effect the certain Award made by the Industrial Accident Commission of the State of California in behalf of the defendant William T. Soley.

The Bill of Complaint alleged that William T. Soley had received a personal injury while in the employ of Complainant under a maritime contract of employment exclusively within the admiralty and maritime jurisdiction of the Courts of the United States; that said injury was received by him while aboard a vessel belonging to the Complainant, which was then afloat upon navigable waters of the United States of America and engaged in Interstate Commerce.

The Bill alleged that the amount in controversy exceeded the sum of three thousand dollars, exclusive of interest and costs, to wit:

35 that it involved the sum of three thousand fifteen and $35/100$ dollars (\$3,015.35), exclusive of interest and costs.

The defendant denied that the amount in issue exceeded the sum of three thousand dollars (\$3,000.00), exclusive of interest and costs.

Now therefore, it is hereby certified that the question of the jurisdiction of this Court upon the grounds heretofore stated, to wit: that the amount in controversy did not exceed the sum of three thousand dollars (\$3,000.00), exclusive of interest and costs, was the sole issue upon which the case was decided, I having found that the amount in issue did not exceed three thousand dollars (\$3,000.00), exclusive of interest and costs, it was the duty of the court to dismiss the appeal, which was accordingly taken; and I further certify that it is the only question of law upon the pleading and process for the decision of the Supreme Court of the United States; that the certificate was granted at the term in which the judgment in the case was entered.

Dated, San Francisco, February 27, 1920.

WM. C. VAN FLEET,
United States District Judge.

Endorsed: Filed Feb. 27, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

36

Petition for Appeal.

North Pacific Steamship Company, a corporation, Complainant above named, conceiving itself aggrieved by the decree and order given, made and entered in the above entitled cause in the above entitled court on the 17th day of February, 1920, wherein and whereby it was ordered and decreed that the above entitled action be and the same was thereby dismissed for want of jurisdiction thereof, by the above entitled court, and that judgment be rendered in favor of defendant, William T. Soley, for his costs, amounting to the sum of \$—, does hereby appeal from said order and decree

of said court to the Supreme Court of the United States, and does hereby pray that this petition for said appeal and for leave to prosecute said appeal may be allowed and that a transcript of the record, proceedings and papers upon which said final order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States; and now, at the time of filing this petition for 37 appeal, the said appellant files an assignment of errors, setting up separately and particularly each error asserted and intended to be urged in the Supreme Court of the United States.

And said petitioner further prays that an order may be made fixing the amount of the bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

ERNEST CLEWE,
AITKEN, GLENSOR, CLEWE &
VAN DINE,
Solicitors for said Complainant.

Endorsed: Filed Feb. 27, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

Now comes North Pacific Steamship Company, a corporation, complainant herein, by its undersigned solicitors, and says:

That in the record, proceedings and decree given, made and entered in this cause on the 17th day of February, 1920, there is manifest error, and that said complainant has been denied its just rights by said order and decree entered by said District Court, and that said decree is erroneous and unjust to complainant, and the said complainant hereby assigns and sets out separately and particularly the following errors, viz:

I.

Said District Court erred in making its order and decree on the 17th day of February, 1920, wherein and whereby it ordered, adjudged and decreed that this cause be dismissed for want of jurisdiction thereof by said District Court.

II.

Said District Court erred in giving and making its order and decree on the 17th day of February, 1920, wherein and whereby this cause was dismissed for want of jurisdiction thereof by the above entitled court.

Said District Court erred in dismissing said action and in holding and deciding that the amount in issue in said action did not exceed, exclusive of interest and costs, the sum of \$3,000.00.

IV.

Said District Court erred in dismissing said action and in holding and deciding that the amount in issue in said action was less than the sum of \$3,000.00 exclusive of interest and costs.

V.

Said District Court erred in refusing to hold that complainant was entitled to the relief prayed for in its Bill of Complaint.

Wherefore, said complainant prays that the said decree may be reversed, and for such other relief as may be meet in the premises.

Dated, San Francisco, California, February 27, 1920.

ERNEST CLEWE,
AITKEN, GLENSOR, CLEWE & VAN DINE,
Solicitors for Complainant.

Endorsed: Filed Feb. 27, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

40 *Order Allowing Appeal and Fixing Amount of Bond.*

Whereas, in the District Court of the United States in and for the Southern Division of the Northern District of California, on the 17th day of February, 1920, a decree was made and entered in the above entitled cause wherein and whereby it was ordered, adjudged and decreed that said cause be and the same was thereby dismissed and that the defendant, William T. Soley, have judgment for his costs; and,

Whereas, complainant herein, North Pacific Steamship Company, a corporation, has, on this 27th day of February, 1920, filed its petition for the allowance of an appeal from said decree to the Supreme Court of the United States, together with an assignment of errors in and by which said petition it has prayed that an order be made fixing the amount of the bond which it shall give and furnish upon said appeal;

Now, therefore, in consideration of the premises, and good cause appearing therefor, it is hereby ordered that said appeal be and the same is hereby permitted and allowed and that said appeal 41 may be prosecuted by said complainant;

It is further ordered that the said complainant shall file its undertaking and bond in form and substance conditioned, and with sureties in accordance with the provisions of law and the rules and practice of this court, in the sum of \$500, which said bond and sureties thereon shall be approved before filing and the said amount is hereby fixed as the amount of said bond, said bond to be approved by a judge of this court.

Dated, San Francisco, California, February 27th, 1920.

WM. C. VAN FLEET,
United States District Judge.

Endorsed: Filed Feb. 27, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

Know All Men By These Presents: That the undersigned Fidelity and Deposit Co. of Maryland, a corporation, duly authorized to transact business in the State of California and duly qualified before the Department of Justice to execute bonds and undertakings in any and all Federal Courts of the United States of America, is held and firmly bound and indebted to William T. Soley, Appellee in the above cause, in the sum of five hundred dollars (\$500.00), to be paid to him and his successors and assigns, for which payment well and truly to be made the undersigned binds itself, and its successors, by these presents.

Whereas, lately at a session of the District Court of the United States for the Northern District of California, Southern Division, in a suit pending in said Court between North Pacific Steamship Company, a corporation, complainant, and William T. Soley, defendant, a decree was rendered against said complainant dismissing its said action, and the said Complainant having obtained from said court its Order allowing it to appeal to the Supreme Court of the United States in the aforesaid suit, and a Citation directed to the said defendant William T. Soley citing and admonishing him to be and appear before the Supreme Court of the United States, at the City of Washington, in the District of Columbia, on the 12th day of June, 1920.

Now the condition of the above obligation is such that if the said Complainant shall prosecute this appeal to effect and answer all damages and costs that may be awarded against it if it shall fail to make its plea good, then the above obligation to be void; else to remain in full force and effect.

In Witness Whereof, Fidelity and Deposit Co. of Maryland, a corporation, has hereunto caused its corporate name to be signed and attested and its corporate seal to be affixed by its duly authorized officers at San Francisco, California, this 17th day of April, 1920.

FIDELITY AND DEPOSIT CO OF
MARYLAND,

[SEAL.] By EDWIN C. PORTER,

Attorney-in-Fact.

The foregoing Bond is hereby approved this 17th day of April, 1920.

WM. C. VAN FLEET,
United States District Judge.

Endorsed: Filed Apr. 17, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

44 (Title of Court and Cause.)

Præcipe for Transcript of Record.

The Clerk of the above entitled Court will please prepare a Transcript of the Record for the Appellate Court in the above entitled cause, and is hereby directed to insert therein the following:

1. The Bill of Complaint, filed in the above entitled Court, on the eighteenth day of December, 1917.
2. The Answer of the above named defendant William T. Soley to said Bill of Complaint.
3. The Order given and made by the District Court of the United States, in and for the Southern Division of the Northern District of California, on the third day of February, 1920, ordering a Judgment dismissing said Bill of Complaint.
4. The Opinion rendered by the Judge of said District Court, the Honorable William C. Van Fleet, on February 3, 1920, on the making of said last mentioned Order.
5. The Judgment and Decree of said Court given, made and entered on the 17th day of February, 1920.
6. All papers filed by Complainant herein in the prosecution of its Appeal, including the Petition for Allowance of Appeal; Assignment of Errors; Order Allowing Appeal and Fixing the Amount of Bond; Certificate setting forth Jurisdictional Question; Statement of Appeal; Citation on Appeal; Appeal Bond and the approval of the same, and Præcipe for Transcript of Record.

Dated, San Francisco, California, April 17th, 1920.

AIKEN, GLENSOR, CLEWE & VAN DINE,
ERNEST CLEWE,
Solicitors for Complainant.

45 Receipt of a copy of the within Præcipe is hereby admitted this 17th day of April, 1920.

HERBERT N. ELLIS,
HENRY HEIDELBERG,
Att'ys for Def'ts.

Endorsed: Filed Apr. 17, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

46 In the Southern Division of the United States District Court in and for the Northern District of California, Second Division.

No. 386. Equity.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Complainant,
vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA,
et al., Defendants.

Clerk's Certificate to Record on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing forty-five (45) pages, numbered from 1 to 45, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above entitled cause, and that the same constitute the record on appeal to the Supreme Court of the United States.

I further certify that the cost of the foregoing transcript of record is \$19.10; that said amount was paid by the attorneys for complainant; and that the original citation issued herein is hereunto annexed.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 15th day of May, A. D. 1920.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
*Clerk United States District Court, Northern
District of California.*

47 In the District Court of the United States in and for the Southern Division of the Northern District of California.

No. 386. Equity.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Complainant,
vs.

INDUSTRIAL ACCIDENT COMMISSION OF STATE OF CALIFORNIA,
WILLIAM T. SOLEY, et al., Defendants.

Citation on Appeal.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to William T. Soley, one of the defendants in the above entitled action, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the City of Washington, in

the District of Columbia, on the 12th day of June, 1920, being within sixty days from date hereof, pursuant to an order allowing an appeal filed in the Clerk's office of the District Court of the United States, in and for the Southern Division of the Northern District of California, wherein the Complainant herein North Pacific Steamship Company, a corporation, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against said appellant, as in said order allowing said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

48 Witness the Honorable William C. Van Fleet, United States District Judge for the Northern District of California, Southern Division, on this 17th day of April, 1920.

WM. C. VAN FLEET,
United States District Judge.

49 Service and receipt of a copy of the within citation on appeal is hereby admitted this 19th day of April, 1920.

HENRY HEIDELBERG,
Attorney for _____.

[Endorsed:] No. 386. Equity. In the Southern Division of the United States District Court for the Northern District of California, Second Division. North Pacific Steamship Company, a corporation, Complainant, vs. Industrial Accident Commission of State of California et al., Defendants. Citation on Appeal. Filed Apr. 19, 1920. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk. Aitken, Glensor, Clewe & Van Dine, Attorneys for Complainant, Mills Building, telephone Douglas 2691, San Francisco.

Endorsed on cover: File No. 27,705. N. California D. C. U. S. Term No. 355. North Pacific Steamship Company, appellant, vs. William T. Soley. Filed May 21st, 1920. File No. 27,705.



FILE COPY

OCT 7 1920

JAMES D. BAKER

SECRET

In the Supreme Court

William T. Scott

October Term 1920

No. 202-63

North Pacific Insurance Company
Appellant

WILLIAM T. SCOTT,

Attala, Attala

North Pacific Insurance Company

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In the Supreme Court
OF THE
United States

OCTOBER TERM 1920

No. 355

NORTH PACIFIC STEAMSHIP COMPANY,
Appellant,
vs.
WILLIAM T. SOLEY,
Appellee.

BRIEF FOR APPELLANT.

I.

STATEMENT OF THE CASE.

This is a direct appeal from a decree of the District Court of the United States for the Northern District of California dismissing appellant's bill of complaint for want of jurisdiction of the cause of action therein set forth. The court concluded, after a trial on the merits, that the value of the matter in dispute did not exceed, exclusive of

interest and costs, the sum of \$3000.00. The correctness of this ruling is the only question presented to this court for its determination (Certificate Setting Forth Jurisdictional Question; Tr. of Record, p. 21).

The facts are as follows:

Appellant, a steamship concern, was operating the Steamship "Breakwater" in interstate ocean transportation of freight and passengers between ports in the States of Washington, Oregon and California during the month of June, 1916. On one of these trips she entered the Port of San Diego, California, June 12, 1916. The appellee, Soley, was employed as a longshoreman on board the vessel in loading and discharging cargo. While engaged in replacing hatch coverings, at the close of the day's work, he met with a severe injury.

In December, 1916, appellee filed an application with the Industrial Accident Commission of the State of California pursuant to the provisions of the Workmen's Compensation Insurance and Safety Act (Chapter 176 of the Laws of 1913, of the State of California as amended by Chapter 531, 607 and 662 of the Laws of 1915), for the purpose of obtaining compensation for the injuries suffered and for the medical and surgical expenses incurred by him as a result thereof. The proceedings before the Commission resulted in the rendition and entry on April 18, 1917, of certain purported "Findings and Award". The findings showed upon their face that the accident to appellee occurred while

he was engaged in a maritime contract of employment and that therefore the Commission had no jurisdiction over the subject matter of the application for any purpose. Nevertheless an award was entered in his favor by the terms of which appellant was ordered to pay to him the following sums:

1. Cash in hand on account of disability indemnity accrued up to the date of the award.....\$281.25

2. Cash in hand for medical and hospital services and attention..... 515.35

Total cash in hand.....\$796.60

3. The sum of \$11.25 weekly in advance on account of disability indemnity "beginning with the 19th day of December, 1916, until the termination of such disability or the further order of the Commission, the total period of payment, however, not to exceed 240 weeks"; total future payments.....\$2700.00

Total award.....\$3496.60*

On June 4, 1917, appellee, pursuant to the provisions of the Compensation Act, filed in the office of the County Clerk of the City and County of San Francisco a copy of the findings and award, and pursuant to the provisions of the Act, a judgment of said Superior Court in his favor based thereon

*This amount was inadvertently computed at \$3015.35 and is so stated in the bill of complaint.

and in accordance with its terms was made, signed and recorded on the same day.

Appellant not having paid any portion of the sums awarded him, appellee on November 12, 1917, caused a writ of execution to be issued against it to satisfy the judgment of the Superior Court to the extent of the amount which had then accrued under the findings and award. This amount did not at that time exceed the sum of \$1500.00. The writ was returned wholly unsatisfied on November 28, 1917.

On December 18, 1917, appellant filed its bill of complaint in this action for the purposes *inter alia* of enjoining appellee from endeavoring in any manner whatsoever to enforce the award of the Commission or the judgment of the Superior Court, and of obtaining an adjudication declaring them null, void and of no effect. On *January 2, 1919*, appellee answered.

On *August 20, 1919*, appellee filed with the Commission an application for an order fixing the duration and extent of his disability, and for the termination of appellant's liability under the award as of *December 10, 1917* (Tr. of Record p. 18, f. 31). The application was granted by the Commission, and on *August 25, 1919*, its order terminating disability indemnity was entered (Tr. of Record p. 18). In this order, the Commission recited its findings that the disability suffered by the appellee had terminated December 10, 1917, and that the total liability of this appellant was therefore limited to the sum of \$1307.75. It will be noted that this last mentioned

order was entered by the Commission *more than twenty months after the institution of this action* and indeed *on the very day before trial*.

Upon trial the appellee was permitted, over objections made by the appellant, and exceptions taken to the rulings of the court thereon, to present evidence to the effect that he had fully recovered from his injury on December 10, 1917, and to introduce in evidence the above mentioned purported order of the Commission terminating the liability of appellant.

The cause having been submitted, the court reached the conclusion that the value of the matter in dispute did not exceed, exclusive of interest and costs, the sum of \$3,000.00, and upon this ground entered its decree dismissing the bill of complaint.

The court reached its conclusion as appears from its oral opinion (Tr. of Record p. 19) upon the theory that the act of the Commission in terminating the disability indemnity liability of appellant (by the order entered some twenty months after the institution of the action) as of December 10, 1917, whereby it restricted the total amount which appellant could at any time after the entry of this last mentioned order be compelled to pay, to \$1370.00, disclosed a case in which the jurisdictional amount was not involved. It also proceeded upon the theory that, whereas the order for weekly indemnity payments was by its terms made subject to the continued disability of appellee, "or the further order"

of the Commission, this appellant was bound, prior to the institution of the action, to have applied to the Commission for an order determining whether the condition of appellee had so changed as to entitle it to *an order of that tribunal* fixing its maximum liability in a sum less than \$3000.

The contention of the appellant was and is:

1. That jurisdiction of the cause is to be determined in the light and legal effect of the circumstances which existed at the moment of its institution and that no subsequent alteration in these circumstances, whether by order of the Commission or otherwise, could in any manner affect the jurisdiction of the court. In other words, if the circumstances existing when the bill of complaint was filed were such as to clothe the court with jurisdiction, no later development, whatever its character, could bring about an ouster of that jurisdiction.

2. That whereas the Commission admittedly acted in excess of its powers in assuming jurisdiction of the application made to it by appellee and in making and entering its findings and award, this appellant was under no obligation, either to appear before the Commission in the original proceeding, or to apply to it thereafter for the purpose of terminating its purported liability under an order void on its face.

3. That by virtue of the filing by appellee of the findings and award in the Superior Court and of the judgment entered thereon, both the award and the judgment being in full force and effect when the

bill of complaint herein was filed, the value of the matter placed in dispute by appellant in seeking to enjoin the enforcement of the award and judgment, was necessarily the amount which, upon the record, it then stood ordered to pay to him, namely, \$3496.60.

4. That inasmuch as the bill of complaint on its face contained averments in conformity with the jurisdictional requirements and no charge was made or showing attempted that they were not made in good faith, the court had jurisdiction.

5. That it is apparent from the record and from the opinion of the court that the ascertainment of the amount involved necessarily depended upon the determination and decision by the court of controverted issues of fact and of law, and that the court, having jurisdiction to determine these controverted issues, also had jurisdiction to entertain the bill for all purposes and to grant the relief sought.

II.

ERRORS ASSIGNED AND RELIED UPON.

1. The court erred in making its order and decree wherein and whereby it ordered, adjudged and decreed that this cause be dismissed for want of jurisdiction thereof.

2. The court erred in giving and making its order dismissing this cause for want of jurisdiction thereof.

3. The court erred in dismissing said action and in holding and deciding that the amount in issue therein did not exceed, exclusive of interest and costs, the sum of \$3000.00.

4. The court erred in dismissing this action and in holding and deciding that the amount in issue therein was less, exclusive of interest and costs, than the sum of \$3000.00.

5. The court erred in refusing to hold that this complainant was entitled to the relief prayed for in this bill of complaint (Tr. of Record p. 22, fol. 38).

III.

Brief of Argument.

THE CIRCUMSTANCES EXISTING AT TIME OF FILING THE BILL OF COMPLAINT ARE DETERMINATIVE OF JURIS- DICTION.

The rule that the jurisdiction of Federal courts over causes of action depends upon and is determined by the circumstances which exist at the institution of the action, and that such jurisdiction cannot be ousted nor affected by any subsequent alteration of those circumstances, has been laid down and reiterated by this court on so many occasions and in so many decisions that to enter into a discussion of the point and to cite authorities in support of it would appear to serve no useful purpose. The rule stands absolutely without contradiction.

It is well stated as follows:

*"The plaintiff's right to sue is anterior to any defense which the defendant may make, and must depend upon the situation and condition of things when the action is instituted. It cannot be made to depend on the defense which defendant may elect to set up."**

Way, et al. v. Clay, et al., 140 Fed. 352.

This being the case, the order of the Commission entered August 25, 1919, terminating the liability of appellant as of December 10, 1917, cannot and does not enter into the question here raised. Either the court had jurisdiction when the bill was filed, and hence of the cause for all purposes, or it did not. The argument herein will therefore be confined to a discussion of the circumstances existing when the action was commenced and of their legal effect.

Appellant's Legal Liability When This Action Was Commenced was \$3496.60.

The award of the Commission commanded payment to appellee of \$3496.60. The maximum sum which appellant could eventually be called upon to pay under its terms was definitely determined and did not depend upon any affirmative contingency. The obligation of appellant to pay the total sum had at that time been imposed upon it by the Commission as fully and completely as that body could have imposed it in any case. That appellant's lia-

*Italics are ours throughout.

bility might have been reduced by subsequent order of the Commission is utterly immaterial for the reason that no such order had been made, and indeed none was ever made until the day before the trial of this action. The possibility that such an order would ever be made was a contingency negative in its nature, upon the occurrence of which neither this appellant nor the District Court could ~~not~~ be required to speculate.

Having filed the findings and award in the Superior Court and having obtained a judgment thereon, appellee's *legal right and power* to collect the full sum of \$3496.60 by means of a series of levies of execution was complete. As will be shown, he could not be deprived thereof save by a further order of the Commission filed in the Superior Court. The continuance of his right did not depend upon any affirmative contingency. Provided only that the record in the Superior Court remained unaltered, he was at liberty to demand and compel the issuance of writs of execution whenever and as frequently as any sum of money became payable to him pursuant to the terms of the award and the judgment founded thereon. He might, in fact, have taken out a writ of execution every week for the sum of \$11.25 until the full amount of \$3496.60 should have been paid him. To precisely the same extent appellant stood in danger of being deprived of its property. To safeguard itself against that peril was its right and its purpose in instituting this action.

**Appellant's Legal Liability Was Terminable Only by Order
of the Commission Filed in the Superior Court.**

The award provided *inter alia* for the payment to appellee of

“2. The further sum of eleven dollars and twenty-five cents (\$11.25) per week, payable in advance, beginning with the 19th day of December, 1916, until the termination of said disability or the further order of this Commission, the total period of payment, however, not to exceed two hundred forty weeks.”

It is to be noted that the weekly payments were to continue

“until the termination of said disability, *or* the further order of this Commission.”

This question, therefore, arises: Could the liability of appellant to make payment, in accordance with the terms of the award and judgment, have been legally terminated by the bare fact of appellee's recovery without any official determination thereof, or indeed, in any manner otherwise than by an order of the Commission itself?

The Compensation Act provides as follows,

Sec. 25, subd. (d):

“The Commission shall have continuing jurisdiction over all its orders, decisions and awards made and entered under the provisions of sections twelve to thirty-five, inclusive, of this act and may at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter or amend any such order, decision or award made by it upon good cause appearing therefor; provided, that

no award of compensation shall be rescinded, altered or amended after two hundred forty-five weeks from the date of the injury. Any order, decision or award rescinding, altering or amending a prior order, decision or award shall have the same effect as is herein provided for original orders, decisions or awards."

The Act further provides,

Sec. 26, subd. (a) :

"Any party affected thereby may file a certified copy of the findings and award of the Commission with the clerk of the Superior Court for any county, or city and county, and judgment must be entered by the clerk in conformity therewith immediately upon the filing of such findings and award."

Sec. 26, subd. (d) :

"When a judgment is satisfied in fact, otherwise than upon an execution, the Commission may, upon motion of either party, or of its own motion, order the entry of satisfaction of the judgment to be made, and upon filing a certified copy of such order with the said clerk, he shall thereupon enter such satisfaction, and not otherwise."

The Commission is a body, whose awards and orders are judicial determinations or judgments. It has a continuing jurisdiction over all its proceedings and it alone has the power to alter, amend, rescind or set aside its own orders or decisions rendered within the limits of its jurisdiction. The Act provides a method and *the only method* by which liability to make continued payments to an employee may be *legally* terminated.

The third portion of the Act above quoted conclusively shows that the right of appellee to demand and obtain writs of execution directed against this appellant continued until the record in the Superior Court should disclose that the judgment had been satisfied by executions or until it should contain an order of the Commission for the entry upon that record of its satisfaction in fact.*

It necessarily follows that the mere circumstance that appellee had recovered from his injury would not and could not automatically have deprived him of the *legal power* to require and obtain writs of execution. If his recovery, unascertained and undetermined, officially or otherwise, by the Commission or any other tribunal, *ipso facto* terminated this appellant's future liability, appellant would have been *ipso facto* entitled automatically and immediately to a satisfaction of the record with respect thereto. But the clerk is expressly prohibited from entering any satisfaction save upon the express terms stated in the Act and until a satisfaction was so entered this appellant stood menaced and threatened with a deprivation of its property through process of execution.

So long as the record in the Superior Court remained as it stood on the date of the institution of this action, this appellant was bound by it, and the clerk of the court was bound by it. He was obliged

*This record does not show that the purported order of the Commission entered August 25, 1919, terminating appellant's liability, was ever filed in the Superior Court. On the very date of the trial the judgment of the Superior Court stood unaltered.

to act upon it, for he certainly had no power to take cognizance of facts, as having the legal effect of working a satisfaction of the judgment from the date of their existence, which were not judicially determined and not officially or otherwise before him.

If this contention is incorrect, the clerk of every Superior Court in which findings and awards are filed, has the power which the Act expressly says he shall not have, to pass upon a question of fact and to declare a judgment satisfied. It would follow also that the clerk has the power to all intents and purposes to substitute himself in the place and stead of the Commission and to "rescind, alter or amend" an award in spite of the fact that such power is expressly given and reserved exclusively to the Commission itself.

It is, of course, perfectly obvious that it is only the *legal rights of appellee and the corresponding legal liability of appellant*, as they existed at the institution of this action, which are here in controversy. If appellant was at that time threatened and menaced by a judgment under which, as it then existed, it might in the course of time have been deprived of property exceeding \$3000.00 in value, the lower court had jurisdiction. Appellee was aware of this, for in the District Court he took the position that his *legal power* to recover weekly indemnity payments and appellant's *legal liability* to make such payments wholly ceased and ended as a matter of law on the date of his recovery, namely, December 10, 1917, eight days prior to the filing of

the bill. But that he had so recovered merely demonstrated that the award should have been terminated as of that date; that his legal right to collect accruing payments should have been officially cut off. It does not in the slightest degree show that his power to deprive this appellant of its property had actually been legally terminated, for the record of the Commission and that of the Superior Court are conclusive on that point. These records reveal that that power was in existence when this action was begun, and that power constituted in and of itself a threat and menace against the right of appellant to remain secure and undisturbed in its property to the full extent of the award.

Appellee himself, in recognition of the foregoing propositions, in an eleventh-hour attempt to oust the District Court of jurisdiction, on August 20, 1919, filed with the Commission his application for the order terminating appellant's liability which was thereafter made by the Commission on August 25, 1919 (Defendant's Exhibit A, Tr. of Record p. 18).

Appellee's position is based upon a fundamental error. He utterly fails to distinguish between the effect of the existence of facts upon which the Commission might and should, upon application therefor, have made its order terminating liability, and the effect of an order so made and filed in the Superior Court. The latter alone could legally and effectually terminate liability. He fails to distinguish between the basis of such an order and the order itself. Payment of money may satisfy a judgment in

fact, but until payment appears of record a judgment creditor stands in a position where he can, though wrongfully, obtain an execution against the judgment debtor. If he does attempt to use his legal power in such manner, he may be enjoined from proceeding. So here, appellee may have had no just or moral claim to weekly indemnities accruing subsequently to December 10, 1917, but the fact remains that then and at all times thereafter, at least until the Commission's order of August 25, 1919, should have been filed in the Superior Court, he had *the legal power to enforce payment thereof and the exercise of that legal power is the thing which appellant in this action seeks to enjoin.*

Appellant Was Not Bound to Seek Relief Before the Commission.

This court has frequently and emphatically declared that awards made under the circumstances existing in this case are absolutely void and that the Commission was wholly without jurisdiction to entertain the application for compensation for any purpose whatever.

The mere reference to these decisions completely refutes the conclusion of the lower court that this appellant was at any time obliged to apply to the Commission for a determination of the ultimate extent of its liability; that tribunal had no jurisdiction for any purpose, either to make the award or to declare the extent of any liability thereunder. Its entire activity in connection with the matter was

illegal, void and of no effect. Nothing that it did or could have done in the premises had any validity whatever. No principle of law or equity demands that a person perform the idle act of applying to a tribunal which has no jurisdiction over the subject matter of controversy and demanding relief from any order which it has made with respect thereto.

Remer v. Mackay, 35 Fed. 86.

The Value of the Matter in Dispute Exceeded, Exclusive of Interest and Costs, \$3000.00.

At the time that appellant filed its bill, appellee was asserting his right to collect money from it under an order and a judgment founded thereon, which purported, as has been pointed out, without the requirement of the occurrence of any future contingency of any character whatsoever, to give him the power to enforce payment by appellant to himself, from time to time, of sums of money totaling \$3496.60. He was not claiming any sum under a separable, distinct part of the award, for it was indivisible; he could claim under it only as an entirety, as a single, indivisible, judicial determination of his rights against appellant and of appellant's corresponding obligation toward him—a determination subject to alteration or change only at the hands and by order of the Commission itself, which up to the day before trial of this action had not taken any such action.

The object of the appellant in this action was to be rendered secure in its property to the same ex-

tent that it stood menaced by the award and judgment. It sought to enjoin the collection, not only of the sums which had accrued on December 18, 1917, but of the entire amount awarded, namely, \$3496.60.

Hence, the relief sought by appellant, had it been granted, *would have denied appellee the right to collect the entire amount*, including both that portion of it which had accrued when this suit was filed, and the future payments thereafter to accrue. It is the value to appellant of this relief which measures the value of the matter in dispute.

This court has said:

“* * * the jurisdictional amount is to be tested by the value of the object to be gained by complainants * * *.”

Glenwood, etc. Co. v. Mutual Light Co., 239 U. S. 121.

Appellant was insisting upon its right to remain secure in its property to the extent of \$3496.60.

“The relief sought is the protection of that right now and in the future, and the value of that protection is determinative of the jurisdiction.”

Glenwood, etc. Co. v. Mutual Light Co., 239 U. S. 121.

Into the foregoing judicial expression there may be made appropriate interpolations, and it then becomes absolutely applicable to the instant case:

“The relief sought [in this action] is the protection of that right [of the appellant to re-

main undisturbed in its property] now and in the future, and the value of that protection [namely, to declare void an award and judgment involving \$3496.60] is determinative of the jurisdiction [of the court herein]."

For

"* * * where an injunction is prayed for, the amount in controversy is the value of the injunction itself, undoubtedly is the correct rule."

Bureau of National Literature v. Sells, 211 Fed. 379.

"By the matter in dispute is meant the subject of litigation, *the matter for which the suit is brought.*"

Lee v. Watson, 1 Wall. 337; 17 L. Ed. 557.

Injunctive Relief Looks to the Future and, Where Threatened Acts or Rights Asserted Involve \$3000.00, the District Court Has Jurisdiction.

The award and judgment stood as a continuing threat against appellant's property. The law afforded appellee an opportunity to collect sums then due under it, as well as those thereafter accruing.

Appellant was not compelled to speculate upon appellee's intention to avail himself of this opportunity; nor to seek relief at the hands of a tribunal having no power to act; nor to stand by until its property had been seized at intervals until the total value reached \$3000.00. If the rule were otherwise, then even though the award had been in the sum of \$100,000, so long as it fell due in installments of less

than \$3000.00 each, which were enforced as they fell due, the appellant would have been absolutely unable to seek protection at any time in the Federal courts, because, forsooth, appellee might at any moment have formed the intention of not enforcing subsequently accruing indemnity payments. It was sufficient to clothe the lower court with jurisdiction that a void award and judgment, involving on their face over \$3400.00, no part of which had been paid, stood of record against it when action was filed.

Smith v. Whitney was a case in which an application was made for a writ restraining proceedings by court martial against an officer. Objection was made to the appellate jurisdiction of this court on the ground that the subject matter of the litigation was incapable of pecuniary estimation. The objection was overruled, the court saying:

"The matter in dispute is whether the petitioner is subject to prosecution which may end in a sentence dismissing him from the service, and depriving him of a salary, as Paymaster General, and as Pay Inspector thereafter, which in less than two years would exceed the sum of \$5000.00."

Smith v. Whitney, 116 U. S. 167; 29 L. Ed. 601.

Where a complainant sought an injunction to restrain a series of threatened seizures of his goods by State officials under a statute alleged to be violative of the Federal law and where it appeared that the particular seizure complained of in the bill did

not involve goods of the value of the jurisdictional amount, the United States Supreme Court said:

“Nor can it be reasonably claimed that the plaintiff must postpone his application to the Circuit Court, as a court of equity, until his property to an amount exceeding the value of \$2000.00 has been actually seized and confiscated, and when a preventive remedy by injunction would be of no avail.”

Scott v. Donald, 165 U. S. 107; 41 L. Ed. 648.

The same rule is applied in

Hunt v. N. Y. Cotton Exchange, 205 U. S. 322; 51 L. Ed. 821.

The principle of the foregoing cases is the same as that upon which it has uniformly been held by the United States Supreme Court, that jurisdiction exists where the right to levy and impose taxes was attacked on the ground that it was violative of Federal law, but in which the particular tax complained of involved less than the jurisdictional amount. The court has always held that the value of the thing in controversy, where the right to make future levies was called in question, as well as the validity of the particular tax, was not the amount of the tax, but was co-extensive with the amount of the tax and the right to levy, asserted by the defendant and sought to be enjoined by the complainant.

Berryman v. Board of Trustees, 222 U. S. 334;

New Orleans v. Citizens Bank, 167 U. S. 371;
Deposit Bank v. Frankfort, 191 U. S. 499.

So here, appellant in filing its bill called into question the validity of the entire award and appellee's right to enforce, not only accrued payments, but all payments subsequently to accrue as well.

In

Chesapeake & Delaware Canal Co. v. Gring,
159 Fed. 662,

Gring sought an injunction against the enforcement of certain alleged onerous, oppressive and illegal regulations enforced by a canal company, in connection with the use of its water.

In overruling a plea to its jurisdiction, the court said:

"We are of opinion that the demurrer to the jurisdiction was properly overruled, as the subject-matter in dispute was above the jurisdictional amount, and, although it might be that in no one year would the amount claimed to be illegally exacted amount to more than \$2000, the injury to complainant was of the nature of a continuous trespass, the proper remedy for which would be by an injunction, which would avoid the necessity of bringing an indefinite number of suits in the future. The prevention of vexatious litigation and of a multiplicity of suits is a favorite ground for the exercise of the jurisdiction of equity."

Chesapeake & Delaware Canal Co. v. Gring,
159 Fed. 662 at 665.

So, also, where a railroad company sought an injunction to restrain the prosecution of a series of actions to enforce small penalties for alleged over-charges of freight, it was held that the court had

jurisdiction because the right of maintaining scheduled rates was the thing in dispute and this right was worth more than the jurisdictional amount.

Texas & P. R. Co. v. Kuteman, 54 Fed. 547.

Where the relief sought was an injunction against the interference with water rates it was held it was not the difference between the rates contended for by the complainant and those insisted upon by the defendant, but the value of the right to fix rates which determined jurisdiction.

Board of Trade, etc. v. Cella Com. Co., 145 Fed. 28.

The value of the right to conduct business without being subjected to an onerous tax and not the amount of the tax itself determines the jurisdictional amount in actions for injunction against such tax.

Humes v. City of Ft. Smith, 93 Fed. 857;
The Mississippi & Missouri R. R. Co. v. Ward, 67 U. S. 485; 17 L. Ed. 311.

What measures the value of the thing—that is to say, the award and judgment—placed in controversy in this action? Obviously *it is the amount which the complainant stood ordered to pay to appellee under their terms at the time that the action was begun and which appellee had the legal power to collect, namely, the entire sum of \$3496.60.*

Where, as in This Case, the Jurisdictional Amount Is Pleaded in Good Faith or the Determination of the Amount Involved Depends Upon Issues of Fact or Law, the Court Has Jurisdiction.

Where a complainant alleges in good faith that the value of the matter in dispute exceeds \$3000.00, or the value of the matter in dispute cannot be ascertained without a determination of issues of fact or law, the court has jurisdiction *for all purposes*.

If it appears that the amount was overstated for the purpose of getting jurisdiction, or if it appears from the record as a matter of absolute certainty that the jurisdictional amount cannot possibly be involved, the court will refuse to entertain the action. These rules are well settled.

"The matter in dispute is the amount sought to be recovered by the complainant. When that is disputed, and the arguments for and against it must be heard and weighed and decided by the court, then the court having the right and the duty to hear and determine it has jurisdiction, without regard to the fact that, notwithstanding the claim in the bill, the ultimate recovery cannot equal the jurisdictional limit. The fact that there is a valid defense to the action, apparent on the face of the bill, does not diminish the amount that is claimed, or deprive the court of jurisdiction. Schunk v. Moline Milburn & Stoddart Co., 147 U. S. 505, 13 Sup. Ct. 416, 37 L. Ed. 255. Wherever the court has the admitted power to decide the question, this is an admission that the court, to this extent, has jurisdiction. Railroad Co. v. Adams, 180 U. S. 35, 21 Sup. Ct. 251, 45 L. Ed. 412. What, then, is the matter in dispute? We must in-

quire what the complainant claims and what the defendant denies. If the complainant claims against the defendant more than \$2000.00, exclusive of interest and costs, and this be denied by defendant, and the point must be decided by the court, then the matter in dispute—the amount in controversy—exceeds \$2000.00, and the court has jurisdiction. 'The court cannot judicially take notice that by computation it may possibly be made out, as a matter of inference from the plaintiff's pleading, that the plaintiff's claim in reality is below the jurisdictional amount'. *Scott v. Lunt's Adm'r.*, 6 Pet. 349, 8 L. Ed. 423. The Supreme Court of the United States have determined that it is the claim set up by the plaintiff which fixes the jurisdiction of the court; not a claim evidently fictitious, and alleged simply to create jurisdiction, but a claim made in good faith, upon grounds however fallacious or untenable. *Sehunk v. Moline Milburn & Stoddart Co.*, *supra*. Mr. Justice Blatchford, in *Opton v. McLaughlin*, 105 U. S. 644, 26 L. Ed. 1197, emphasized this doctrine, and held that, although upon the face of the plaintiff's pleading there appeared a perfect defense to the action, still the court had jurisdiction; that is to say, the right to hear and determine that fact. * * *

It may be—no doubt it will be—that an examination will show that the debt due to plaintiff has been very materially reduced below \$2000.00. 'But we are not to regard the verdict or judgment as the rule for ascertaining the value of the matter in dispute between the parties. * * * To ascertain, then, the matter in dispute, we must recur to the foundation of the original controversy—to the matter in dispute when the action was instituted. The descriptive words of the law point emphatically to this criterion, and in common understanding the

thing demanded, not the thing found, constitutes the matter in dispute between the parties."

Interstate Building & Loan Ass'n. v. Edgefield Hotel Co., 109 Fed. 692-3-4.

The same rule is laid down in the following cases:

LeRoy v. Hartwick, 229 Fed. 857;

Brent v. Chas. H. Lilly Co., 202 Fed. 335;

Garrett v. Mallard, 238 Fed. 335;

Tennent-Stribling Shoe Co. v. Roper, 94 Fed. 739;

Schunk v. The Moline, Milburn & Stoddart Company, 147 U. S. 500; 37 L. Ed. 255;

Armstrong v. Walters, 223 Fed. 451.

The rule which appellant contends should have been observed, but which was violated by the District Court, is concisely and clearly stated as follows:

"The difficult question is as to the jurisdictional amount. * * * I take it that the rule is this: Whenever, by an inspection of the complaint—perhaps of the whole record—it appears that the amount claimed is within the jurisdictional limit, or that, being apparently beyond it, the statement is conclusive, or a fraud on the jurisdiction, the court must dismiss the cause. *But when it is necessary, in order to ascertain the amount involved in controversy, to consider the conflicting testimony, or to decide disputed questions of law, this necessity alone gives the court jurisdiction. The court, under such circumstances, must hear the case, and*

reach its conclusions judicially; in other words, it must take jurisdiction."

Stillwell-Bierce, etc. Co. v. Williamston Oil and Fertilizer Co., 80 Fed. 68.

This case falls squarely within the doctrine of the foregoing decisions:

1. Because the appellant in good faith pleaded the jurisdictional amount;
2. Because the record discloses that the value of the relief sought by the plaintiff exceeded the jurisdictional amount;
3. Because appellee pleaded in defense of this action an alleged recovery from his injuries prior to its commencement and his allegations presented an issue of fact which the lower court had to decide upon evidence presented at the trial and which it could not have passed upon without the reception of such evidence;
4. Because the legal effect upon the liability of the appellant of appellee's alleged recovery, in the absence of any official determination thereof, or action thereon prior to the commencement of this suit, was and is a disputed question of law.

"The court, under such circumstances, must hear the cause, and reach its conclusion judicially; in other words, must take jurisdiction."

Stillwell-Bierce, etc. Co. v. Williamston Oil and Fertilizer Co., 80 Fed. 68.

IV.

CONCLUSION.

The award and judgment were void because the Industrial Accident Commission had no jurisdiction of the subject-matter.

When this action was begun appellant stood menaced in its property by a judgment involving payment by it to appellee of \$3496.60. The value to it of an injunction restraining enforcement of the judgment was in the same amount. Hence the jurisdictional amount was involved.

No circumstance occurring subsequently to the filing of the bill could affect or oust jurisdiction. Hence, the Commission's order terminating liability could not affect the question and was inadmissible in evidence.

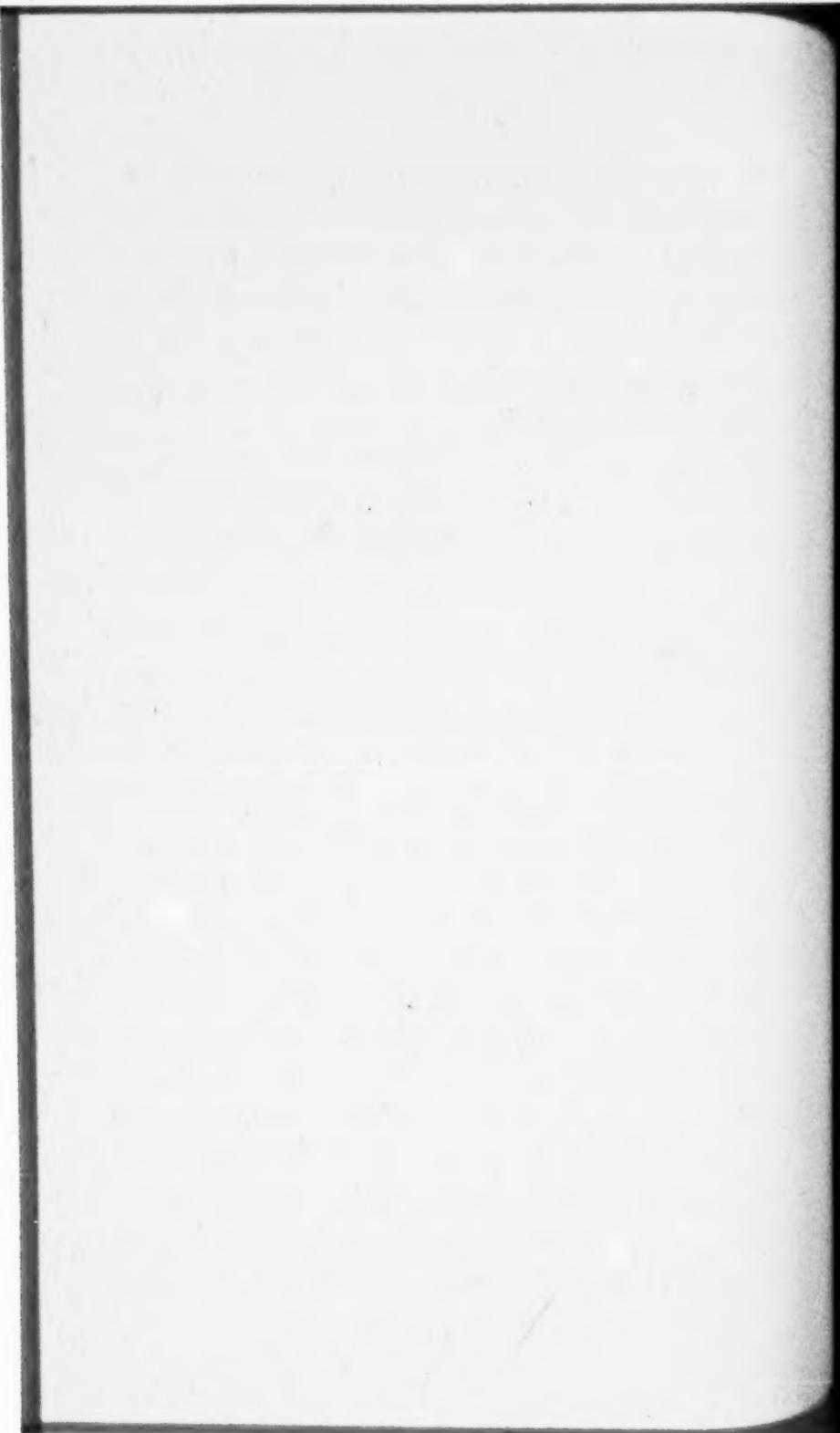
Appellee's recovery prior to the commencement of the action is immaterial, because it did not alter or affect his *legal power* to deprive this appellant of property. That power could have been taken from him only by the Commission by an order filed in the Superior Court. But no such order was made until twenty months after the commencement of this action, nor does it appear that any copy thereof has ever (even now) been filed with the clerk.

The District Court had jurisdiction because the jurisdictional amount was pleaded in good faith, and determination of the value of the matter in dispute depended upon disputed issues of both law and of fact.

Therefore, it is most respectfully submitted that the decree of the District Court is erroneous; that it should be reversed, and that the cause should be remanded with instructions to enter a decree in favor of appellant as prayed in its bill.

Dated, San Francisco,
September 29, 1920.

ERNEST CLEWE,
FRANK W. AITKEN,
Solicitors for Appellant.



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CLEVELAND

In the Supreme Court
OF THE
United States

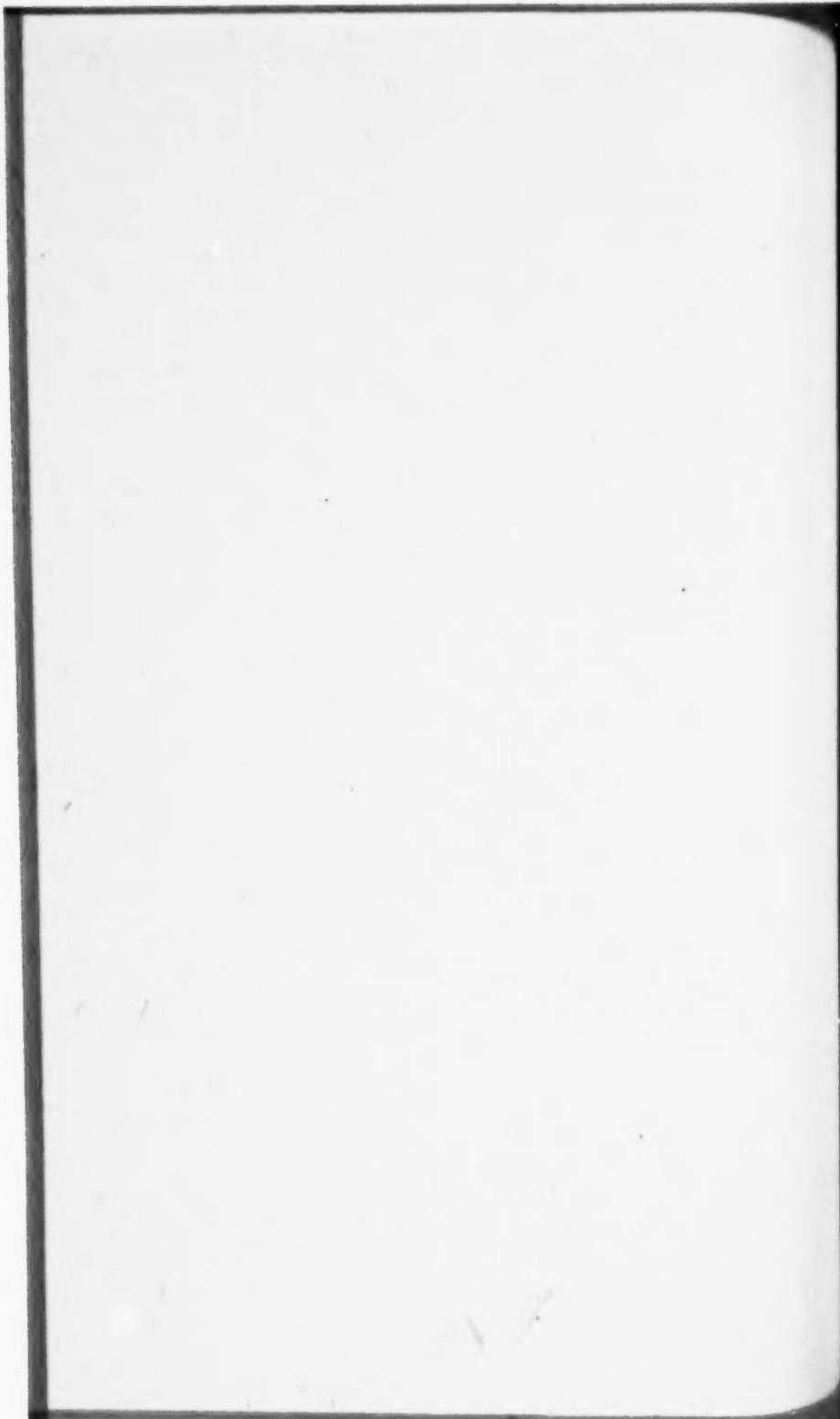
October Term 1920

No. 35563

NORTH PACIFIC STEAMSHIP COMPANY,
Appellant,
vs.
WILLIAM T. SOLEY,
Appellee.

BRIEF FOR APPELLEE.

Christopher M. Bradley
HERBERT N. ELLIS,
HENRY HEIDELBERG,
Solicitors for Appellee.



In the Supreme Court
OF THE
United States

OCTOBER TERM 1920

No. 355

NORTH PACIFIC STEAMSHIP COMPANY,
Appellant,
vs.
WILLIAM T. SOLEY,
Appellee.

BRIEF FOR APPELLEE.

William T. Soley was injured on the 12th day of June, 1916, while at work as a stevedore on the steamer "Breakwater" at anchor in San Diego Bay, California.

On April 18, 1917, the Industrial Accident Commission of the State of California, duly made and gave its award in favor of William T. Soley, the only part of which award necessary for consideration by this court being as follows:

"Now therefore, and in conformity with the foregoing findings, award is hereby made in

favor of William T. Soley, the applicant herein, of a temporary total disability indemnity, and his medical expenses, payment thereof to said applicant to be made as follows:

1. Cash in hand the sum of Two Hundred Eighty-one Dollars and twenty-five cents (\$281.25), this amount being the sum of weekly payments of said disability indemnity accrued up to and including the 18th day of December, 1916, less, however, the sum of Thirty Dollars (\$30.00) to be deducted therefrom and paid to Herbert B. Ellis as his attorney's fee as attorney for applicant herein.

2. The further sum of Eleven Dollars and twenty-five cents (\$11.25) per week payable weekly in advance beginning with the 19th day of December, 1916, *until the termination of said disability or the further order of this commission*, the total period of payment, however, not to exceed two hundred and forty weeks. (Italics ours.)

3. Cash in hand the sum of Five Hundred and Fifteen Dollars and thirty-five cents (\$515.35) for medical and hospital services rendered as follows:

Agnew Sanitarium	\$149.85
Dr. E. H. Crabtree.....	152.00
Dr. Maynard C. Harding.....	203.50
Dr. L. C. Kinney, for X-ray.....	10.00

INDUSTRIAL ACCIDENT COMMISSION OF
THE STATE OF CALIFORNIA,
A. J. Pillsbury,
Will J. French,
Commissioners."

On the 18th day of December, 1917, appellant herein filed its bill in equity in the District Court of the United States in and for the Southern Division of the Northern District of the State of California asking that the Findings and Award of the

Industrial Accident Commission be declared null and void; and also asking to be relieved against a writ of execution based upon a judgment in the Superior Court of the State of California in the sum of \$1325.25, which judgment was secured in accordance with the Compensation Act of the State of California, by filing in the said Superior Court the aforesaid Findings and Award of the Industrial Accident Commission, and, thereupon, and on the 12th day of November, 1917, there was issued out of the said Superior Court of the State of California, the execution herein questioned, in the sum of \$1325.25 and interest in the sum of \$29.20.

The only question before this court on appeal concerns the jurisdiction of the Federal Courts.

When the court, Honorable Judge Van Fleet presiding, inquired into the real facts existant, there was only one conclusion possible—that the court had no jurisdiction to further proceed because of the lack of a sufficient amount being in controversy.

Appellant failed to assert its rights under and pursuant to the Workman's Compensation Insurance and Safety Laws of the State of California, and on appeal to the Supreme Court of the State of California, it was held that appellant had no remedy because of his laches and because of the running of the Statute of Limitations of the State of California.

Appellant would have the court believe that an award against them in the sum of \$3496.60 had been made by the Industrial Accident Commission, and

yet only a casual reading of the Findings and Award would show that such was not the case, but that figure represents the ultimate maximum amount which could possibly become due, providing the two contingencies mentioned in the aforesaid Findings and Award never happened, but unfortunately for appellant both contingencies had happened at the time the court was called upon to pass upon jurisdictional question of the amount.

The award shows on its face that it was to be continuous only in the event that W. T. Soley would be disabled for a period of 240 weeks or that no "further order" would be made by the Industrial Accident Commission.

As a matter of fact the liability imposed under the Findings and Award of the Industrial Accident Commission had terminated one week prior to the filing of appellant's bill in equity, to wit, on the 10th day of December, 1917.

Upon that date W. T. Soley had been discharged by his physician as cured and W. T. Soley, according to the testimony given by himself at the hearing before Judge Van Fleet in the District Court on that date (December 10, 1917), resumed his work as a stevedore, being at said time fully restored to health and vigor, and, of course, then the liability of appellant under the award of the Industrial Accident Commission had ceased, and appellant owed Soley the sum of \$1370.35, and no more.

Appellant asserts that its liability was only terminable by an order of the Commission filed in the

Superior Court, and yet in its brief quotes certain sections of the Compensation Act which absolutely negative that assertion by the appellant, and which clearly show that in order to terminate an award it is only necessary that an order be made by the Industrial Accident Commission, which was done prior to the establishment of Federal Court Jurisdiction.

When the court finally had the case presented to it on August 26, 1919, it was on the bill of complaint filed by the appellant and upon the motion to dismiss, and the answer filed by W. T. Soley, in which pleadings of defendant it was alleged that the jurisdictional amount was not such as to confer jurisdiction upon the District Court.

Inasmuch as the bill of complaint made an averment that the jurisdictional amount was in excess of \$3000 and the pleadings filed by defendant denied that allegation, it was, of course, the first duty of the court to take evidence as to the jurisdiction of the court.

Penn Co. v. Bay, 138 Fed. 203;
Bronson v. Board of Supervisors of Emmett
and *Kossuth Counties*, 237 Fed. 212.

Even though the pleadings of appellee failed to disclose the lack of jurisdictional amount involved, the court would have been bound to inquire, on its own motion, into the question of jurisdiction.

Empire City Fire Ins. Co. v. Amer. Cent. Ins. Co., 218 Fed. 774.

It will be noted that the Commission found, as a fact, that W. T. Soley's disability had ceased on the 10th day of December, 1917, and that there was then due him the total sum of \$1370.35. This figure of \$1370.35 is all that appellant could possibly have been called upon to pay, *or for which execution could be levied, and represents the total amount of money in question here*, and, therefore, of course, the jurisdictional amount required in the Federal Court is lacking.

W. T. Soley himself took the stand in the District Court and testified that he had been informed on the 10th day of December, 1917, by his physician, that he was completely cured and restored to his health, and that he then returned to work and that he never contemplated any further demand upon appellant herein.

"After my doctor told me I was cured I went back to work on or about December 10, 1917, and have been working ever since. I have made no claim on my employer since that time." (Transcript p. 18.)

There was then introduced in evidence by appellee an order terminating disability made by the Industrial Accident Commission on the 25th day of August, 1919 (one day before the hearing in the District Court), which order was as follows:

"This cause came on for further hearing this 25th day of August, 1919, upon the petition of applicant above named for an order fixing the duration and extent of his disability, applicant appearing in person and by Herbert N. Ellis, attorney at law, and defendant appearing

by Aitken, Glensor, Clewe & Van Dine, attorneys at law, and the cause having been submitted for decision, this Commission now find that the disability suffered by applicant by reason of his injury on the 12th day of June, 1916, as heretofore found herein terminated on the 10th day of December, 1917, and that the disability indemnity accrued and payable to him therefore to and including said 10th day of December, 1917, amounts to the sum of eight hundred fifty-five dollars (\$855.00) which, together with the medical expenses heretofore awarded herein in the sum of five hundred fifteen dollars and thirty-five cents (\$515.35) makes a total of one thousand three hundred seven dollars and thirty-five cents (\$1307.35) as the total liability of defendant above named due applicant by reason of said injury."

(Signed and attested by the Industrial Accident Commission of the State of California.)

By clerical error the total is made to appear \$1307.35; the correct total is \$1370.35.

This hearing was had after notice to appellant and solicitors for appellant herein were present at said hearing.

Argument.

Appellee cannot conceive of any necessity of citing to this high court legal authorities on such a simple proposition as is presented in this appeal.

When this court is advised that appellant never was indebted to Soley in an amount in excess of \$1370.35 and that appellee could never have secured execution for a greater amount, appellant's assertion

of damages in any sum in excess of that amount falls.

In view of the foregoing facts, which are not contradicted, it will be seen that the authorities cited by appellant condemn the position taken by it and support the contention of appellee, Soley.

It is admitted by appellee, that on the face of the pleadings of appellant, the court had jurisdiction, but he supports the court's contention that under all the pleadings in this case it was the first duty of the court to inquire into the *actual facts* of jurisdiction.

An averment in a complaint as to jurisdictional amount gives *prima facie* jurisdiction, notwithstanding an allegation in the answer that the amount in controversy is less than the jurisdictional amount, until the defendant has sustained the burden of affirmatively showing that the requisite jurisdictional amount is wanting.

Penn Co. v. Bay, 138 Fed. 203.

An averment in a bill in equity in a federal court that the amount or value in controversy exceeds the jurisdictional amount does not give the court jurisdiction unless supported by proof, where it is put in issue, and such issue may be taken by answer.

Ore. R. etc. Co. v. Shell, 125 Fed. 979; aff. 143 Fed. 1004.

To ascertain the right to jurisdiction the court will look not to a single feature of the case, but to the entire controversy between the parties.

Shapiro v. Goldberg, 192 U. S. 252; 48 L. ed. 419.

In determining this question the court will look to the whole record.

Edwards v. Bates County, 55 Fed. 436.

The words "matter in controversy" do not refer to the intention of the parties concerning them, but to the claims presented in the records to the legal consideration of the court.

Kanost v. Martin, 15 How. 198; 14 L. ed. 660.

Where a bill in equity is filed asking a decree giving mandatory or preventive relief it is the value of the property of which the defendant may be deprived by the decree sought which is the test of jurisdiction. (In this instance, \$1370.35.)

Wash. Mkt. Co. v. Hoffman, 101 U. S. 112; 25 L. ed. 782;

Estes v. Cunter, 121 U. S. 183; 30 L. ed. 884.

It is not the sum demanded or claimed which controls, but the jurisdiction depends upon the amount or value which is actually in controversy between the parties.

New Mexico v. A. T. & S. F. R. Co., 201 U. S. 41;

New England Mgt. Sec. Co. v. Gay, 145 U. S. 125.

If before or pending the action involved in a trial court, payment is made or the matter in controversy is partially compromised or settled, the balance left unsettled and unpaid will control the appellate jurisdiction.

Cox v. Western Land Co., 123—31 L. ed. 178;

Hassett v. Germania Bldg. Association (Iowa), 43 N. W. 275.

Where jurisdiction or right of a removal is doubtful, Federal Courts are inclined to rule against assumption of jurisdiction.

Eddy v. Chi. etc. R. Co., 226 Fed. 120.

The policy of the removing statute is to compel persons whatever their citizenship, who have small claims, to litigate them in the state court.

Baltimore etc. R. Co. v. Larill (Ohio), 93 N. W. 619.

When the court, Honorable Judge Van Fleet presiding, finally heard the case, on the 26th day of August, 1919, he ruled that all questions except that of jurisdiction were for the moment immaterial and would be disregarded. After very patiently listening to all the evidence bearing on the jurisdictional question and after hearing lengthy arguments from both sides, the case was ordered submitted and thereafter the judge rendered his opinion as set forth in the transcript to the effect that appellant's bill would be dismissed because of lack of jurisdiction, and we confidently expect that that decision will be sustained by this honorable court.

Dated, San Francisco,
October 25, 1920.

Respectfully submitted,

HERBERT N. ELLIS,
HENRY HEIDELBERG,

Christopher M. Bradley *Solicitors for Appellee.*
1, counsel.



Due service and receipt of a copy of the within is hereby admitted

this _____ *day of October, 1920.*

Solicitors for Appellant.

SUPREME COURT OF THE UNITED STATES.

No. 63.—OCTOBER TERM, 1921.

Northern Pacific Steamship Company, } Appeal from the District
Appellant, } Court of the United
vs. } States for the Northern
William T. Soley. } District of California.

[December 5, 1921.]

Mr. Justice DAY delivered the opinion of the Court.

This case is here solely upon the question of the jurisdiction of the District Court to entertain the suit. The bill was filed in the District Court by the Northern Pacific Steamship Company against the Industrial Accident Commission of California, William T. Soley, and H. I. Mulcrevy, County Clerk of the City and County of San Francisco. The bill alleged that the complainant was engaged in the business of transportation in interstate commerce between various points on the Pacific Coast, and operated the steamer "Breakwater"; that on or about the 12th of June, 1916, the said steamer, then in the navigable waters of the United States loading cargo, had in its employ the respondent, Soley, as a stevedore, and that said Soley was injured by falling down a hatchway of the steamer; that on the 27th day of November, 1916, Soley filed an application with the Industrial Accident Commission for damages under the Compensation Act of California; that, after a hearing, the Commission made the following award:

"1. Cash in hand the sum of two hundred eighty-one dollars and twenty-five cents (\$281.25), this amount being the sum of weekly payments of said disability indemnity accrued up to and including the 18th day of December, 1916, less, however, the sum of thirty dollars (\$30.00) to be deducted therefrom and paid to Herbert N. Ellis as his attorney's fee, as attorney for the applicant herein.

"2. The further sum of eleven dollars and twenty five cents (\$11.25) per week payable weekly in advance beginning with the 19th day of December, 1916, until the termination of said disability or the further order of this Commission, the total period of payment however not to exceed two hundred forty weeks.

"3. Cash in hand the sum of five hundred fifteen dollars and thirty-five cents (\$515.35) for medical and hospital services rendered as follows.

Agnew Sanitarium	\$149.85
Dr. E. H. Crabtree	152.00
Dr. Maynard C. Harding	203.50
Dr. L. C. Kinney, for X-ray	10.00"

The bill averred that by virtue of the award the complainant had been ordered to pay Soley \$3,015.35.

The bill further alleged that at the time of his injury Soley was engaged in the performance of a maritime contract aboard a vessel in the navigable waters of the United States engaged in interstate commerce; that his remedy was exclusively within the admiralty and maritime jurisdiction of the courts of the United States; that under Section 26 of the Compensation Act a certified copy of the findings and award may be filed with the clerk of the Superior Court, and, that upon filing the copy of the findings and the award, execution may be issued upon the judgment; that Soley had filed certified copies of the findings and the award with the clerk of the Superior Court, and unless restrained by injunction, would cause execution to be issued thereon for the purpose of making the amount of the award out of the property of the complainant. The bill prayed an injunction against any steps for the enforcement of the award.

Respondent, Soley, appeared and answered, and, among other things, set up:

"Defendant denies that the value of the matter in controversy herein exclusive of interest and costs exceeds the sum of three thousand dollars; and alleges that the weekly indemnity of eleven and 25/100 dollars awarded to defendant from complainant under the terms of said award and judgment was contingent upon the continuance of defendant's total disability, as appears at the foot of page 4 of complainant's bill, and that at the time of the filing of complainant's bill herein defendant's said total disability had terminated and all of complainant's subsequent liability under the terms of said award of the Industrial Accident Commission of the State of California had ceased; that the total liability of complainant under said judgment sought herein to be enjoined does not and will not exceed exclusive of interest and costs the sum of thirteen hundred eighty-one and 60/100 dollars (\$1,381.60)."

In order that the District Court have jurisdiction of the cause it was necessary that the amount in controversy exceed exclusive

of interest and costs the sum or value of \$3,000. (Judicial Code, Section 24.) Section 37 of the Judicial Code provides "that if in any suit commenced in the district court . . . it shall appear to the satisfaction of the said district court, at any time after said suit has been brought . . . that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of the district court, the court shall proceed no further therein, but shall dismiss the suit . . . and shall make such order as to costs as may be just." Section 37 with the substitution of district court for circuit court is a reenactment of the Act of March 3, 1875, ch. 137, 18 Stat. 470, 472.

The objection that jurisdiction to entertain the suit did not exist is one which may be taken by answer. *Anderson v. Watt*, 138 U. S. 694. Indeed, under Section 37 it is the duty of the court when it shall appear to its satisfaction that the suit does not really and substantially involve the necessary amount to give it jurisdiction, to dismiss the same, and this the court may do whether the parties raise the question or not. In the present case the issue was raised by answer, and, therefore, it became necessary for the court to determine the question of jurisdiction upon the facts presented, and when brought directly here, it is the duty of this Court to review the decision upon the testimony as one presenting a jurisdictional question. *Wetmore v. Rymer*, 169 U. S. 115; *Gilbert v. David*, 235 U. S. 561.

The award upon which the suit was brought provided for the payment of \$11.25 per week in advance beginning on September 19, 1916, until the termination of Soley's disability or the further order of the Commission, the total period of payment not to exceed 240 weeks. Upon the hearing upon the question of jurisdiction a copy of the findings and award of the Commission was put in evidence. Soley was called, and testified among other things, that after his doctor told him that he was cured he went back to work on or about December 10, 1917, and had been working ever since, and had made no claim upon his employer since that time. An order of the Commission, filed August 25, 1919, was introduced in evidence, from which the Commission found that the disability suffered by Soley terminated on the 10th day of December, 1917; that the disability indemnity payable to him up to and including December 10, 1917, amounted to \$855, which together with the medical expenses theretofore awarded amounted

to \$515.35, making a total of \$1,307.35, the total liability of the company to Soley by reason of his injury. It was also stipulated between the parties that the award in favor of Soley, a copy of which was in evidence, had been filed in the office of the clerk of the City and County of San Francisco, that a writ of execution had issued against the complainant on November 12, 1917, to satisfy said judgment to the extent of the amount which had accrued under such findings and award, which was less than \$1,500; that said writ was returned unsatisfied; that the application of Soley for the termination of the award was made on August 20, 1919.

A witness was called who testified that at the time of the injury to Soley the steamer "Breakwater" was engaged in interstate commerce between ports on the Pacific coast.

Upon these facts the District Court found that the jurisdictional amount was not involved. In our judgment it did not err in reaching that conclusion. The award provided for weekly payments until the termination of the disability or until the further order of the Commission. The testimony showed that Soley had been pronounced cured by his physician, and had returned to work on December 10, 1917, eight days before the action was brought. The order of the Commission, terminating the disability indemnity, found that the disability suffered by reason of the injury had terminated on December 10, 1917, and that the total liability of the defendant was \$1,307.35. Under these circumstances the court reached the conclusion that the jurisdictional amount was not involved. This conclusion, being sustained by the evidence, it was the duty of the court to proceed no further with the case.

Affirmed.

A true copy.

Test:

Clerk Supreme Court, U. S.

